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CONSTITUTIONAL VARIATION AMONG STRAINS OF AUTHORITARIANISM

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Constitutional Variation among Strains of Authoritarianism

*David S. Law and Mila Versteeg**

INTRODUCTION

Legend has it that Russian Field Marshall Potemkin built the façades of nonexistent villages along the banks of the river Dnieper to impress visiting dignitaries, such as the Empress, with the illusion of prosperity. Some constitutions are the equivalent of Potemkin villages: they neither constrain nor accurately describe the powers of the state but instead exist primarily to present an attractive face to the world (see, e.g., Law and Versteeg 2013; see also Brown 2002: 4, 91–2; Howard 2009: 13; Lane 1996: 122; Law 2010: 382–3; Marcos 2003: 259; Murphy 1993: 8–9, 2007: 14; Nolutshungu 1993: 366; Sakwa 1996: 118; Sartori 1962: 861; Zhang 2010: 952). It is not difficult to see why authoritarian states might choose to adopt sham constitutions. On the one hand, countries that openly defy the values of "world society" (Meyer et al. 1997) by refusing to pay lip service to human rights and democracy invite ostracism from the international community. On the other hand, there are no constitutional enforcement mechanisms at either the domestic or international level to prevent authoritarian states from making empty promises.

Not all authoritarian constitutions, however, can be dismissed as window-dressing. Some are relatively accurate reflections of a country's legal and political institutions, to the point of brutal candor. The Saudi constitution, for example, expressly obligates the media to "employ courteous language" and conform to state regulation,[1] while the first Soviet constitution explicitly committed the state to "deprive individuals and sections of the community of any rights used by them to the detriment of the interests of the Socialist Revolution."[2] Even an authoritarian regime may have rational reasons

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[1] Saudi Arabia Const. art. 39 (1993); see Brown 2002: 7.

[2] Konstitutsiia RSFSR [RSFSR Const.] arts. 9, 23 (1918).

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for practicing a form of constitutional modesty. Making empty promises can be costly, and an accurate constitution may perform useful functions for the regime. It has been argued, for example, that a constitution can solve coordination problems among members of the regime itself.[3]

In this chapter, we address a combination of theoretical and empirical questions concerning the constitutional choices that authoritarian regimes make. First, to what extent do authoritarian regimes adopt relatively candid constitutions as opposed to unrealistic constitutions, and for what reasons? Second, are certain types of authoritarian regimes more likely to practice constitutional candor, and if so, why?

The descriptive framework for our discussion is a typology of constitutions and authoritarian regimes that distinguishes among four types of constitutions (strong, sham, modest, and weak) and three strains of authoritarianism (monarchical, military, and civilian).[4] We conceptualize authoritarian regimes as rational actors that choose which type of constitution to adopt by balancing the costs and benefits of each option. A descriptively accurate constitution may help an authoritarian regime overcome internal coordination problems but can also expose the regime to delegitimating criticism from domestic and international audiences. We hypothesize that the three varieties of authoritarianism possess distinctive characteristics that lead them to balance the competing demands of legitimacy and coordination in different ways, and to pursue divergent constitution-writing strategies as a result.

Our empirical findings confirm the existence of meaningful constitutional differences not only between authoritarian and democratic regimes, but also among the three strains of authoritarianism. On the whole, authoritarian states are more likely than democratic states to adopt sham constitutions containing a panoply of constitutional rights that are not respected in practice. However, a sizeable minority of authoritarian regimes pursue a different strategy of adopting weak constitutions that promise relatively few rights in the first place. Consistent with our overarching hypothesis, monarchical and military regimes are more likely than civilian regimes to follow this strategy.

A TYPOLOGY OF CONSTITUTIONS AND AUTHORITARIAN REGIMES

In democratic as well as authoritarian states, there is bound to be a degree of divergence between the content of the formal or "large-C" constitution, on the one

[3] See, for example, Melton et al. 2008; Moustafa and Ginsburg 2008: 8 (citing Pinochet's Chile as "the most lucid example of how constitutions have been used to formalize pacts among competing factions within authoritarian regimes").

[4] We use the term "authoritarian regime" in the widely understood sense of an unelected regime that exercises pervasive control over society. However, the empirical measure that we use to identify authoritarian regimes is a binary indicator of dictatorship drawn from Cheibub et al. (2010) that captures only whether a state lacks fair and competitive elections. This indicator does not attempt to account for the repressiveness of the regime.

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TABLE 8.1. *A typology of constitutions*

A country . . .	*. . . delivers little in practice (low* de facto *rights protection)*	*. . . delivers much in practice (high* de facto *rights protection)*
. . . promises much in its constitution (high de jure *rights protection)*	**"sham constitution"** (e.g., Sudan)	**"strong constitution"** (e.g., Finland)
. . . promises little in its constitution (low de jure *rights protection)*	**"weak constitution"** (e.g., Saudi Arabia)	**"modest constitution"** (e.g., Australia)

hand, and the informal or "small-c" constitution that captures the actual organization and behavior of the government, on the other (Law 2010). In the case of a sham constitution, the formal commitments found in a country's formal constitution overstate the country's actual commitments. For example, a country may promise free and fair elections and universal secondary education while in practice holding rigged elections and failing to promote basic literacy. But the opposite scenario is also possible: A country's formal constitution may understate its actual constitutional commitments. A genuinely democratic country that respects a full range of rights in practice might possess a relatively modest constitution that lacks any formal constitutional promise of regular elections, as in the United Kingdom, or a bill of rights, as in the case of Australia (Mayer and Schweber 2008: 229–30; Williams 2004: 306).

This divergence between parchment and practice can be modeled as the product of strategic choice. In conceptual terms, a state can be understood as making two types of constitutional choices, *de jure* and *de facto*. On paper, a regime can promise a wide range of rights and democratic institutions, or it can refrain from making such promises. Likewise, it can in practice uphold a wide range of rights and democratic institutions or none at all. As a result, a regime's *de facto* commitments can equal, exceed, or fall short of its *de jure* commitments.

Variation along these two dimensions of constitutional commitment yields the two-by-two typology of constitutions set forth in Table 8.1 (Law and Versteeg 2013). Along the horizontal axis, countries in the left-hand column respect a wide range of rights in practice, while those in the right-hand column do not. Along the vertical axis, countries in the top row set a high standard for themselves by adopting fairly ambitious constitutions, whereas those in the bottom row include relatively few commitments in their constitutions. In the upper-right quadrant are *sham constitutions*. This category includes countries such as Sudan that promise a wide variety of rights in their constitutions but uphold few of those rights in reality (Law and Versteeg 2013). In the lower-left quadrant, by contrast, are countries such as Australia with constitutions that understate the government's actual commitments. These are labeled *modest constitutions*.

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In the two remaining quadrants are those countries that deliver roughly what their constitutions promise. Even among such countries, however, there remains a meaningful distinction to be drawn. In the upper-left quadrant are countries that deliver what their constitutions promise, in spite of the fact that their constitutions promise a good deal. Countries in this category, such as Finland, possess what might be called *strong constitutions* in the sense that they respect a broad range of constitutional commitments both on paper and in practice. In the lower-right quadrant, by contrast, are countries such as Saudi Arabia that also succeed at respecting their formal constitutions but do so for the reason that their constitutions impose little constraint on the government and contain few commitments that the government might be reluctant or unable to uphold. Countries in this category possess what we call *weak constitutions*. In such cases, the formal constitution is not a sham because its content aligns reasonably well with actual practice, but that alignment is attributable to the fact that the constitution sets low standards that are easily satisfied.

Authoritarian states are not known for upholding a wide range of personal and political freedoms and are therefore less likely to possess constitutions that could be classified as either strong or modest. They do, however, face a choice between the two types of constitutions in the right-hand column. Will they adopt constitutions that are weak but candid about the power and organization of the state? Or will they instead adopt sham constitutions?

The answer may depend in part on the type of authoritarian regime at issue. The relevant political science literature distinguishes among three types of authoritarian regimes – monarchical, military, and civilian. Historically, those of a civilian variety have been most common, while monarchical regimes have been least common. All three types of authoritarian regimes, in turn, are increasingly outnumbered by democratic regimes. Figure 8.1 depicts the relative proportion of each type of authoritarian regime over time, as well as the extent to which authoritarian states are increasingly outnumbered by democratic states.[5]

Each type of authoritarian regime is characterized by a distinctive power base and structure for resolving internal conflict, controlling regime outsiders, and coordinating action (see, e.g., Geddes 1999; Hadenius and Teorell 2007; Levitsky and Way 2002). Monarchical regimes rely on family and kinship networks to resolve succession issues and to govern. Military dictatorships seize power with the help of the military and, once in power, harness the organizational apparatus of the armed forces to consolidate their rule. Civilian dictatorships typically rely on a political party structure to mobilize popular support and keep regime opponents in check. In exchange, the party offers regime collaborators a vehicle for personal advancement within a stable system of patronage (Cheibub et al. 2010).

[5] The data underlying Figure 8.2, including the binary indicator that we use to distinguish between democratic and authoritarian regimes, are drawn from Cheibub et al. (2010).

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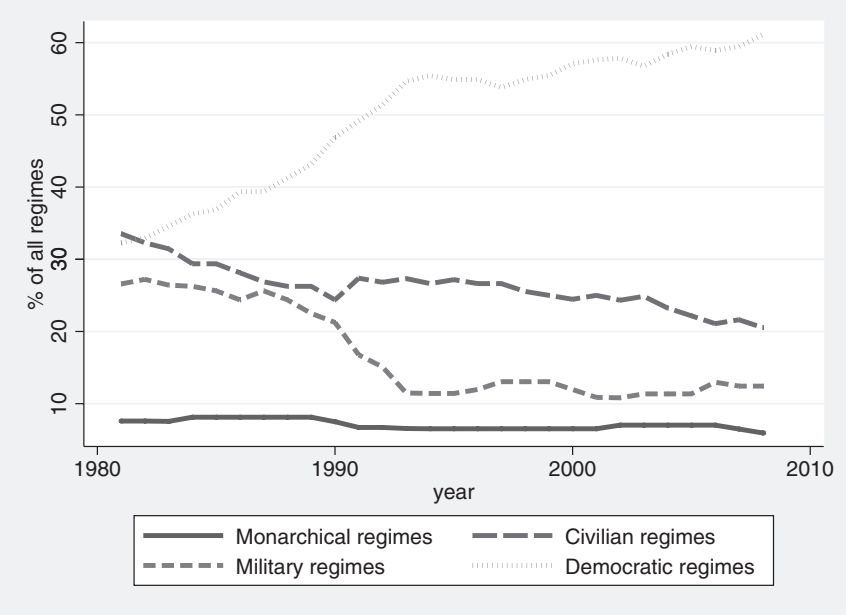

FIGURE 8.1. Prevalence of Different Regime Types

These differences among authoritarian regimes have been found to account for variance over a wide range of outcomes, including economic growth and investment, conflict behavior, political survival, and prospects for democratization (*ibid.*: 90). In the next section of this chapter, we identify several reasons why these differences might also make certain types of authoritarian regimes more prone to sham constitution-writing than others.

THREE HYPOTHESES ABOUT THE CONSTITUTIONAL CHOICES OF AUTHORITARIAN REGIMES

Our theoretical premise is that authoritarian regimes can be understood as self-interested, rational actors whose constitution-writing choices are shaped by the respective costs and benefits of each option. Furthermore, the outcome of this cost-benefit calculus will depend in part on characteristics unique to each type of authoritarian regime. In this section, we identify several factors that might influence the relative attractiveness of sham constitutionalism as opposed to constitutional honesty, and we propose three competing hypotheses as to why certain types of authoritarian regimes might be more likely to practice constitutional candor than others. These are the world society hypothesis, the domestic political economy hypothesis, and the coordination hypothesis.

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The World Society Hypothesis

One possibility is that authoritarian regimes approach constitution-making as a rhetorical exercise in which certain principles and promises must be recited in order to appease the demands and satisfy the expectations of the international community. The international community is increasingly characterized by standardized models of statehood: as Meyer et al. (1997) put it, "many features of the contemporary nation-state derive from worldwide models constructed and propagated through global cultural and associational models" (144–5; see also Frank et al. 2000). More specifically, the growing global popularity of both "rule of law" discourse and an internationally defined human rights paradigm have equipped the international community with explicit and formal constitutional standards against which states can be evaluated (Klug 2000: 58).

States conform to such standardized models to secure recognition from the international community. The notion that states adopt laws with an eye toward securing acceptance from other states is hardly new. As Hegel observed nearly two centuries ago, if a civilized nation lacks "in its own eyes and the eyes of others a universal and universally valid embodiment in laws . . . it fails to secure recognition from others" (Hegel 1820: 218). At the dawn of the twenty-first century, a formal constitution that embodies certain values and principles has become both a sign of modernity and a statement of conformity to the values of "world society" (Meyer et al. 1997). In order to secure membership in international institutions and win the acceptance and recognition of the international community, states must at least purport to accept the values of world society by reciting a standard constitutional script that pays allegiance to such notions as democracy, human rights, and the rule of law (Chimni 2004: 15; Law and Versteeg 2011: 1228–30; Meyer et al. 1997: 153).

It is clear, however, that constitution-writing in authoritarian regimes is not driven solely by the goal of appeasing the international community with appropriate rhetoric. Were that the sole consideration, all authoritarian regimes would choose to adopt sham constitutions. In reality, many authoritarian constitutions are relatively candid, as demonstrated by parts of the Arab world (Brown 2002). Constitutional candor can be an entirely rational strategy for an authoritarian regime to pursue because of the costs and risks associated with sham constitutionalism. There is always the possibility that a sham constitution can be turned against the regime: the commitments made in a constitution can become a rallying point for domestic opposition and provide the basis for national and international nongovernmental organizations (NGOs) to engage in naming and shaming (Epp 1998; Simmons 2009). The 1971 Egyptian constitution, for example, has been described as "the joke that turned serious" for the Mubarak regime (El-Ghobashy 2008: 1598). Likewise, the adoption of judicially enforceable bills of rights in Georgia, Ukraine, and Kyrgyzstan backfired on authoritarian leaders by paving the way for judicial invalidation of

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rigged election results that ultimately brought down the leaders themselves (Trochev 2013).[6]

Any regime contemplating adoption of a sham constitution thus faces a trade-off between the benefits of international legitimacy and the political risks that come with a sham constitution. Certain types of authoritarian regimes, in turn, may be more willing to forego international approval than others. Monarchical regimes may find it relatively unnecessary to justify their rule by adopting the legalistic trappings of the modern nation-state. Monarchies typically enjoy some combination of deeply rooted historical and religious claims to authority. Both religion and tradition provide normative foundations for the state that are alternatives to, and compete with, legal modernity (Arjomand 1992; de Maistre 1810; Hassall and Saunders 2002: 120). To the extent that religious and historical claims to authority satisfy domestic audiences, monarchical regimes may experience less need to pursue international acceptance by adhering to the latest fashions in constitutional drafting.

Military regimes typically do not possess the historical or religious legitimacy of monarchical regimes. However, their control of the state can instead rest on their capacity to employ brute force. Insofar as this capacity for force is an adequate substitute for traditionalist claims to legitimacy, military dictators may also feel relatively little need to curry the favor of world society by paying tribute to the constitutional norms and standards of world society.

By contrast, civilian or party-based dictatorships may be unable either to take the backing of the military for granted or to assert their legitimacy on traditionalist grounds. They must instead find some other basis on which to command allegiance, such as ideology or charismatic leadership, that may be neither as tangible nor as well established. Although monarchs and military rulers are also capable of possessing ideological or charismatic appeal, their ability to do so merely reinforces the hold on political power that they already enjoy for other reasons. Civilian dictators do not have the same range of options for securing acceptance of their rule. In theory, this vulnerability may give them a greater incentive to seek international legitimacy. One way in which they may do so is by adopting constitutions that signal conformity to the values and expectations of world society. The world society hypothesis thus yields the prediction that, of the three types of authoritarian regimes, civilian dictatorships have the greatest incentive to adopt constitutions that espouse broadly popular norms, even if they have little intention of honoring those norms in practice.

THE DOMESTIC POLITICAL ECONOMY HYPOTHESIS

A related but analytically distinct hypothesis is that authoritarian constitutions are written primarily to appease *domestic* audiences. Faced with challenges to

[6] See also, for example, Reale 1939: 153–54 (discussing Mussolini's suspension of the Italian constitution).

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their authority, autocrats choose between strategies of repression and appeasement (Acemoglu and Robinson 2006: 681; Cook 2006: 68; Howard and Roessler 2006: 365). A regime that chooses repression may find it advantageous to adopt a brutally honest constitution. A constitution that forthrightly describes the allocation and extent of state power generates clear expectations that may not only help the regime overcome internal coordination problems, but also deprive the regime's opponents of the ability to rally potential opposition around the constitution or criticize the regime for behaving unconstitutionally. A regime that promises too many constitutional rights, by contrast, must beware the possibility that it may one day face pressure to live up to those commitments (Simmons 2009).

Alternatively, authoritarian regimes may pursue an appeasement strategy that includes a constitutional component. This tactic was prominently on display in the context of the recent Arab Spring, in which various dictators sought to appease popular uprisings and remain in power by offering concessions in the form of constitutional reforms (Brown 2012; see, e.g., BBC 2011; Hirschl 2013). A regime may of course renege on these concessions once challenges to its rule have subsided. If political pressure persists, however, even an authoritarian regime may find itself forced to respect rights in practice as well as on paper.

The choice between repression and appeasement – and thus between promising few or many rights – will reflect a regime's need to secure popular support and bolster its domestic legitimacy. The more that a regime needs popular support in order to remain in power, the less plausible that a strategy of repression becomes, and the more concessions that the regime must make to the people (Bueno de Mesquita et al. 2003). Civilian regimes, in turn, are likely to be in greater need of popular support than either monarchical or military regimes because they cannot rest to the same degree on tradition or brute force. One way in which a civilian dictatorship can cultivate popular support is by making ideologically or normatively appealing commitments in constitutional form. If those commitments are not upheld in practice, however, the result will be a tendency toward sham constitutionalism.

The Coordination Hypothesis

It has long been recognized that constitutions play an important role in coordinating social and political behavior (Hardin 1989; Ordeshook 1992; Przeworski 1991; Weingast 1997). Scholars writing in this vein emphasize that the very act of writing a constitution can create conventions that are hard to change in the future. Indeed, the efficacy of a constitution rests on its ability to generate such conventions. Because constitutions lack third-party enforcement, they must be self-enforcing, and they accomplish this feat by coordinating behavior in ways that "raise the costs of doing things some other way" and form "an obstacle to re-coordination" (Hardin 2013). If this account is correct, a constitution will be effective if it actually

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coordinates behavior, regardless of whether its content is normatively appealing (Ginsburg 2012; Hardin 2013).

Authoritarian regimes are not immune to internal division and coordination problems. A descriptively accurate constitution that clarifies the allocation of power and the roles that different actors or factions within the regime are supposed to play may be useful to the regime as a means of signaling the expectations and desires of the leadership to subordinate officials and of resolving conflict within the regime. A constitution that successfully coordinates government action and defines popular expectations can also help consolidate the regime's grip on power by inhibiting recoordination on a different set of arrangements (Hardin 2014).

Such coordinating functions are most obviously performed by structural constitutional provisions that define the institutions of government and allocate power among them. However, the rights-related constitutional content of a constitution can also shape beliefs and coordinate behavior in ways that enhance regime stability. The constitutional omission or repudiation of basic rights can foster and reinforce popular beliefs about the ubiquity of government control and the futility of opposition or dissent. Such beliefs can, in turn, become self-fulfilling: A belief that challenges to the regime will not be tolerated, for example, discourages challenges to the regime. Conversely, a constitution that contains a host of unfulfilled rights can backfire by coordinating regime opponents, who may employ the constitution as both a source of formal legitimacy for their actions and a common set of goals.

Thus, even the most ruthless of authoritarian regimes interested only in its own survival may find that sham constitution-writing has its disadvantages. A constitution that consists merely of pretty lies will not be an effective device for coordinating social and political behavior in ways that consolidate the regime. This disadvantage may be outweighed, however, by other considerations. From the perspective of a rational authoritarian regime, the potential coordination benefits of a relatively candid approach to constitution-writing must be weighed against the loss of legitimacy resulting from adoption of a constitution that fails to meet the normative expectations of domestic and international audiences.

Different types of authoritarian regimes, in turn, have reason to strike this balance differently. Monarchical and military regimes inherently possess effective internal coordination mechanisms (family relations and military command structure, respectively) that may obviate coordination devices of a constitutional variety (Cheibub et al. 2010). Party-based civilian regimes, by contrast, lack the benefit of such mechanisms yet face formidable coordination problems. The maintenance of a party apparatus is a coordination-intensive activity involving popular mobilization, recruitment, and large-scale organization. In the face of such challenges, constitution-writing may prove an appealing coordination strategy.

The coordination and world society hypotheses thus yield conflicting predictions. To the extent that authoritarian regimes rely on constitutions to solve coordination problems, their constitutions should accurately reflect reality, and this tendency

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toward candid constitution-writing should be stronger for civilian regimes than for monarchical or military regimes. Conversely, to the extent that authoritarian regimes employ constitutions as a means of paying lip service to globally imposed values and principles that they have little or no interest in honoring, their constitutions should bear little resemblance to reality. This should be especially true of civilian regimes, insofar as their inherently weaker grip on power leaves them especially in need of international approval.

The preceding hypotheses and the competing predictions that they yield for different types of authoritarian regimes can be summarized as follows:

H1: The world society hypothesis. – Authoritarian regimes adopt sham constitutions to signal conformity to the norms of world society. Among the three types of authoritarian regimes – monarchical, military, and civilian or party-based dictatorships – civilian regimes will be most inclined to pursue such a strategy because they can neither take the backing of the military for granted nor invoke the tradition-based claims to authority and legitimacy that are available to monarchical regimes. The unavailability of these other forms of support may increase the relative attractiveness of other approaches to securing acceptance, such as constitution-writing that appeals ideologically to international audiences.

H2: The domestic political economy hypothesis. – Authoritarian regimes make constitutional promises to enhance their appeal and consolidate support. Civilian or party-based regimes in particular cannot make the same religious or historical claims to authority as monarchical regimes and cannot rely on sheer force to the same extent as military regimes. Instead, they must construct governing party structures by mobilizing and organizing supporters. To do so, they will adopt constitutional provisions that are normatively or ideologically appealing to potential supporters.

H3: The coordination hypothesis. – Authoritarian regimes face internal coordination problems, which they address by adopting constitutions that are sufficiently genuine to function as coordinating devices. All other things being equal, coordination problems of this kind are likely to be more acute among civilian dictatorships than either monarchical regimes (which can coordinate via familial ties) or military regimes (which already enjoy a highly disciplined and hierarchical organizational infrastructure with clearly defined lines of authority, in the form of the military itself). Civilian regimes should therefore be more likely than monarchical or military regimes to adopt relatively candid constitutions.

Measuring Constitutional (Dis)Honesty

To explain the gap between what authoritarian regimes promise in their constitutions and how they behave in practice, we must first devise a way of measuring the gap itself. We do so by matching data on the content of the world's constitutions against empirical indicators of actual human rights practice. Our data span the

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written constitutions of 188 countries from 1946 onward. The full data set contains 237 variables that cover the rights-related content of each constitution.[7]

The next step was to collect indicators of the extent to which rights are upheld in practice. We rely primarily on the widely used measures of human rights performance compiled by Cingranelli and Richards (2011) from the annual human rights country reports issued by Amnesty International (2011) and the U.S. State Department (Law and Versteeg 2013).[8] Because these indicators are not available on a consistent basis prior to 1981 or subsequent to 2008, we confine our analysis to the twenty-eight-year period from 1981 through 2008.

In total, we identified fifteen empirical indicators of *de facto* human rights performance that correspond to fifteen of the *de jure* rights covered by our data on formal constitutions. The fifteen rights for which we were able to compile both *de jure* and *de facto* data are as follows: prohibition of arbitrary arrest and/or detention, prohibition of torture, right to habeas corpus, fair trial rights, prohibition of the death penalty, freedom of assembly and/or association, freedom of movement, freedom of religion, right to vote, freedom of press or expression, right to health, right to education, gender equality in marriage, gender equality in labor relations, and protection of minority rights.[9] The manner in which a country's level of *de facto* and *de jure* respect for each of these fifteen rights was coded is explained in Appendix 1.

Combining the de facto and de jure data enables us to calculate, for any given country in any given year, (1) how many of the fifteen rights were promised on paper, (2) how many of the same fifteen rights were upheld in practice, and (3) the degree of overlap between what was promised and what was upheld (Law and Versteeg 2013). Figures 8.2 through 8.4 are graphs that simultaneously depict the de facto and de jure performance of all countries for the years 1986, 1996, and 2006, respectively.[10] Each country occupies a position in two-dimensional space: its position on the horizontal dimension equals the number of rights that it promises on paper, while its position on the vertical dimension equals the number of rights that it upholds in practice.

Constitutional Variation Between Democratic and Authoritarian Regimes

As expected, the data show that authoritarian regimes are, on the whole, more prone to sham constitutionalism than democratic regimes. However, authoritarian

[7] For an introduction to the data on formal constitutions, see Goderis and Versteeg 2011; Law and Versteeg 2011.

[8] The other sources of data on human rights performance on which we relied were Amnesty International (2013) for our death penalty data; the Minorities at Risk dataset (2011) to capture minority rights; Hathaway (2002) for the fair trial data; the World Bank Development Indicators (2013) for data on life expectancy rates; and Vanhanen (2003) for illiteracy rates.

[9] For an explanation of how these fifteen rights were selected, see Law and Versteeg (2013).

[10] These graphs depict the total number of rights upheld in practice by each country, rather than the number of rights contained in the constitution that were also upheld in practice.

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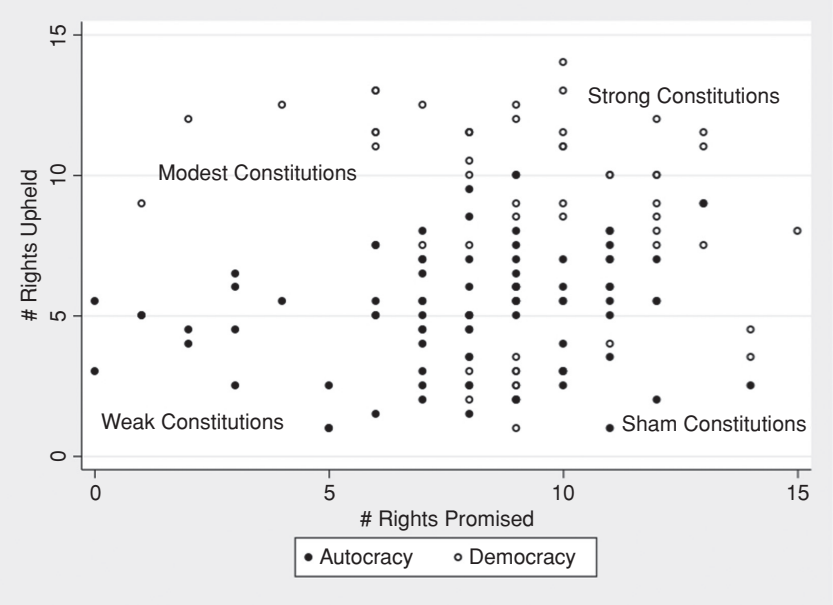

FIGURE 8.2. Types of Constitutions Among Authoritarian and Democratic Regimes, 1986

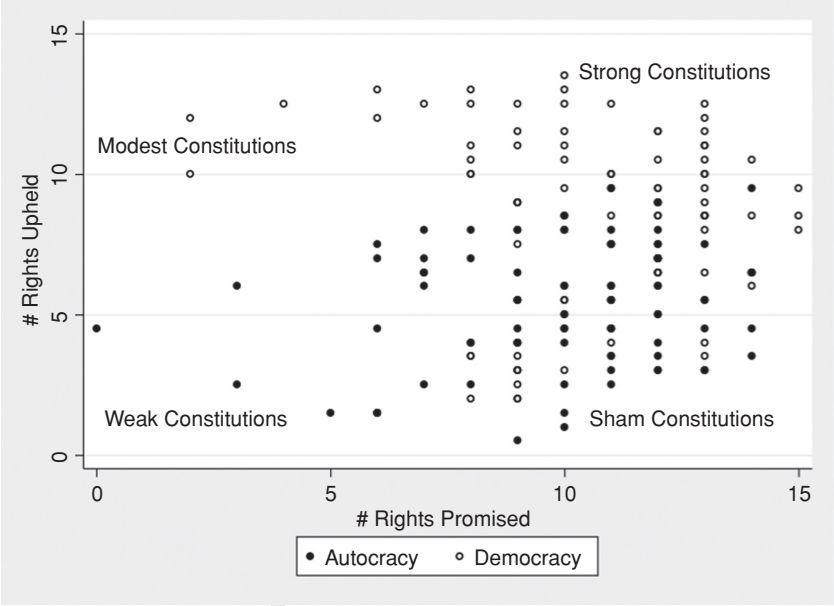

FIGURE 8.3. Types of Constitutions Among Authoritarian and Democratic Regimes, 1996

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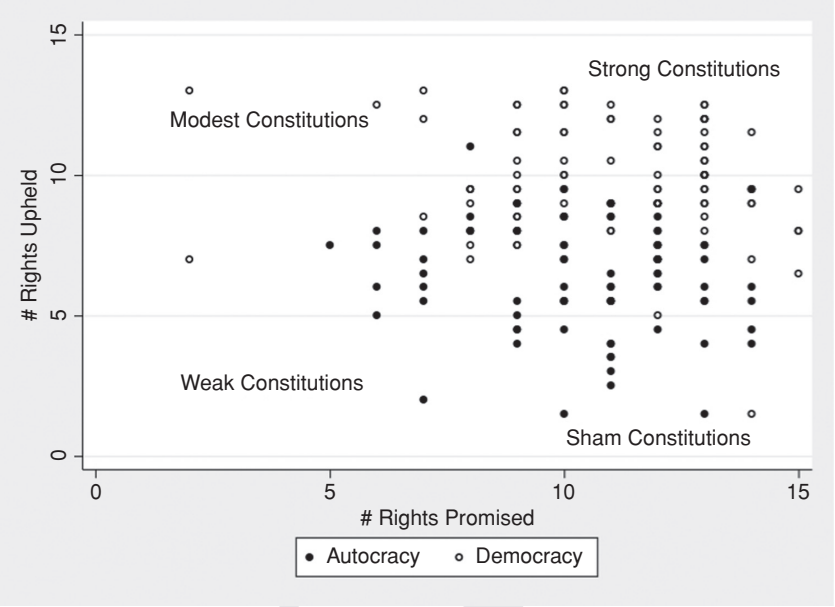

FIGURE 8.4. Types of Constitutions Among Authoritarian and Democratic Regimes, 2006

regimes also vary considerably from one another. In Figures 8.2 through 8.4, authoritarian regimes are represented by solid black dots, while democratic regimes are represented by hollow circles.

Democratic regimes are largely clustered in the top half of each graph, which corresponds to respect for a greater number of rights in practice. By contrast, authoritarian regimes are overwhelmingly clustered in the bottom half of each graph. The finding that autocratic regimes are characterized by less respect for rights should not come as a surprise: as an empirical matter, if not also by definition, democratic countries are more likely to respect rights than authoritarian countries (Poe et al. 1999). Authoritarian constitutions can be further divided into two camps: those in the bottom right of each graph promise a relatively large number of rights and can thus be classified as sham constitutions, while those in the bottom left refrain from promising too many rights and can thus be classified as weak constitutions. In each graph, the quadrants that correspond to sham and weak constitution-writing are overwhelmingly populated by authoritarian as opposed to democratic regimes.

The graphs also suggest a degree of migration by authoritarian regimes from the weak category to the sham category. This migration is a result of the fact that countries tend to add rights to their constitutions over time (Law and Versteeg 2011: 1195). This phenomenon of "rights creep" is not unique to authoritarian regimes but also characterizes democratic countries (*ibid.*). Among authoritarian regimes in

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particular, however, actual respect for rights has not kept pace with growth in the number of rights promised, and the result has been a tendency toward increasingly sham constitutions.

Regression analysis confirms that authoritarian regimes are more likely than democratic regimes to adopt sham or weak constitutions, even if one controls for potentially relevant variables such as economic development and population size. To control for these variables, we estimate a multinomial logit model in which the predictor variable is captures whether a nation is authoritarian and the dependent variable is the type of constitution that a country possesses. Our measure of authoritarianism is a dichotomous variable devised by Cheibub and colleagues (2010) that distinguishes between democracies and dictatorships.[11]

The coding of the dependent variable follows the typology of constitutions introduced in Table 8.1. Each constitution was classified as sham, strong, modest, weak, or average. Constitutions that contained more than nine of the fifteen rights were classified as either strong (if a majority of the promised rights were actually upheld) or sham, while those containing fewer than nine rights were classified as either modest or weak (depending again on the number of rights actually upheld). Constitutions containing nine rights – the global average from 1981 through 2008 – were classified as average.[12]

To isolate the effect of authoritarianism on a country's choice of constitutional type, we include a number of control variables that we have previously found to be correlated with sham constitution-writing (Law and Versteeg 2013). These control variables are as follows:

(1) Whether a country is experiencing *civil war* (Gleditsch 2007).[13] Civil war is often associated with suspension of the constitutional order and rights infringement and is therefore expected to dampen constitutional compliance

[11] Cheibub et al. (2010), in turn, rely on earlier work by Przeworski et al. (2000). Experimentation with two alternative measures of authoritarianism did not affect our results. The first alternative was a more granular measure of authoritarianism derived from the Polity IV data set that ranges from +10 (strongly democratic) to −10 (strongly autocratic) (Marshall and Jaggers 2007). The second alternative was a binary version of the this same variable that we constructed by selecting the values of 4 and 6 as cutoffs to separate democracies from autocracies. (For a similar approach to constructing a binary indicator of democracy, see Simmons (2009).)

[12] To be precise, our numerical criteria for assigning a constitution to one of the five categories were as follows. A country was classified as possessing a *strong* constitution if it promises at least ten of the fifteen *de jure* rights in its constitution *and* it upholds more than half of the included rights in practice. Conversely, a country was instead classified as possessing a *sham* constitution if it promises at least ten of the fifteen rights but actually upholds less than half of the promised rights. Countries that promise fewer than nine rights and uphold less than half of the unpromised rights were classified as possessing *weak* constitutions, while countries that promise fewer than nine rights but uphold at least half of the unpromised rights were categorized as possessing *modest* constitutions. Finally, constitutions that promised exactly nine rights were classified as average.

[13] The presence of civil war is captured by a dummy variable that takes a value of 1 if civil war affects a country in a given year and 0 otherwise.

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(Hafner-Burton and Tsutsui 2005, 1388; Poe et al. 1999, 305; Poe and Tate 1994, 865).

(2) The country's level of *economic wealth*, as measured by the natural log of its gross domestic product (GDP) per capita (World Bank 2008). Scholars have identified several reasons why a country's level of economic wealth may influence the degree to which it meets its constitutional obligations. Conflict over scarce resources can generate instability that in turn triggers government repression (Blasi and Cingranelli 1996: 225). In addition, wealthier countries are inherently more capable of honoring constitutional obligations of a socioeconomic variety that entail government expenditures, such as a right to education or health (Cingranelli and Richards 2011: 215). Consistent with such theories, studies have repeatedly found that wealthy countries tend to possess superior human rights practices (Blasi and Cingranelli 1996: 225–6).

(3) Whether a country is located in a particular *geographic region*. Our expectation that regional patterns affect constitutional performance is in line with existing scholarship on policy diffusion, which emphasizes the tendency of neighboring jurisdictions to adopt similar policies for reasons related to sheer proximity (Elkins and Simmons 2005: 34; Rogers 2003: 276–77). To the extent that governments within a particular region serve as benchmarks and sources of inspiration for one another (Elkins and Simmons 2005: 45), it is unsurprising that they adopt similar approaches to the drafting and implementation of constitutions. In previous work, we found that North Africa and the Middle East, Sub-Saharan Africa, and South Asia are characterized by relatively high levels of constitutional noncompliance, even after controlling for a variety of political and economic variables (Law and Versteeg 2012, Tbl. 13; see also Brown 2002).

(4) The natural log of the country's *population size* (World Bank 2008). The existing empirical literature suggests that more populous countries are more prone to human rights violations. Rapid population growth can place stress on a country's limited resources, and governments may resort to repression to manage the resulting friction (Hafner-Burton and Tsutsui 2005: 1388; Henderson 1993: 330; Poe and Tate 1994: 861; Poe et al. 1999: 305). Methodological considerations also lead us to control for population size. The Cingranell and Richards indicators purport to measure the absolute number of rights violations in a country rather than the per capita incidence of rights violations, which can have the effect of penalizing more populous countries.

(5) A variable that captures the *passage of time*. Inclusion of a linear time trend enables us to evaluate the possibility that there exists a gradual trend toward constitutional dishonesty among authoritarian regimes, as suggested by Figure 8.1 through Figure 8.3.

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The resulting model takes the following form:[14]

$$Y^*_{itj} = \beta_{1j}Autocracy_{it} + \beta_{2j}Civilwar_{it} + \beta_{3j}GDP_{it} + \beta_{4j}Region_i + \beta_{5j}Population_{it} + \beta_{8j}Time_t + \varepsilon_{itj} \quad (1)$$

where y^*_{itj} is a latent variable for y_{itj},

$$j = \{Strong, Sham, Modest, Weak, or\ Average\} \quad (2)$$

Because the dependent variable consists of discrete categories (strong, sham, modest, weak, or average), we employ multinomial logit regression. However, the coefficients from a multinomial logit regression do not lend themselves to substantive interpretation. Accordingly, we report relative-risk ratios in lieu of regression coefficients. These relative-risk ratios capture the change in the probability that a particular type of country will adopt a particular type of constitution relative to some baseline probability (Greene 2011: 720–23). The baseline for comparison in the present case is the probability that a democratic country adopts an average constitution. If a variable carries a relative-risk ratio of less than 1, this means that the variable's effect on the probability that a country adopts a specific type of constitution (compared to the probability of an average constitution) is negative, while a relative-risk ratio greater than 1 means that the effect is positive.[15] Suppose for example that the relative-risk ratio associated with dictatorship is 0.8 for a modest constitution and 12 for a weak constitution. In this example, the relative-risk ratios indicate that a country that switches from democracy to dictatorship becomes twenty percent less likely than before to possess a modest constitution (given the corresponding relative-risk ratio of less than 1) but twelve times more likely than before to possess a weak constitution (given the corresponding relative-risk ratio that is much greater than 1).

The relative-risk ratios confirm that authoritarian countries are more likely than democracies to choose a sham or weak constitution over an average constitution, even if one controls for all of the other variables in the model. As indicated in Table 8.2, the relative-risk ratio for an authoritarian regime to choose a *sham* constitution over an average constitution is 4.22 (meaning that a country that switches from democracy to authoritarianism becomes 4.22 times more likely than before to choose a sham constitution over an average constitution, holding all other variables constant). However, that same country becomes 12.53 times more likely than before to choose a weak constitution over an average constitution. In other words, the probability that a newly authoritarian regime will adopt a weak constitution is about three times larger than the probability that it will adopt a sham constitution. Even though a growing number of authoritarian regimes have migrated to the sham category in

[14] In this model, we calculate robust standard errors clustered at the country level to correct for heteroskedasticity and serial correlation over time.

[15] The multinomial logit model is estimated in Stata using the "mlogit" command, and the relative risk ratios are obtained by including the "rrr" option.

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TABLE 8.2. *Authoritarian versus democratic regimes: relative-risk ratios (computed from multinomial logit regression)*

	1 Sham constitution	2 Strong constitution	3 Modest constitution	4 Weak constitution
Dictatorship	4.224***	0.563	0.852	12.527***
GDP per capita (ln)	0.563***	0.762*	1.684**	1.005
Population (ln)	1.843***	1.378**	1.590***	1.414*
Sub-Saharan Africa region	0.238**	0.194***	2.489	1.448
South Asia region	0.656	0.126***	0.727	0.196
North Africa/Middle East region	0.684	0.196**	1.294	1.296
Civil war	4.604***	0.579	0.064**	1.333
Time trend	1.114***	1.086***	0.995	0.983

$n = 3{,}385$
*** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

recent decades, the phenomenon of the weak constitution – wherein few rights exist either on paper or in practice – remains largely unique to authoritarian regimes.[16]

The effects of the control variables also comport with our expectations. A higher GDP per capita simultaneously decreases the likelihood of a sham constitution that overstates the country's actual commitment to rights, and increases the likelihood of a modest constitution that does precisely the opposite. Conversely, civil war is strongly associated with sham constitutionalism. The regression model also confirms the existence of regional differences: countries in Sub-Saharan Africa, South Asia, and North Africa and the Middle East are all less likely than those in other regions to possess strong constitutions.[17] Finally, all other things being equal, countries have become more likely over time to fall in the strong or sham category, which is to say that countries are promising a growing number of constitutional rights but not always upholding them as well.

Constitutional Variation among Different Types of Authoritarian Regimes

More noteworthy than the differences between authoritarian and democratic regimes, however, are the differences among various types of authoritarian regimes. Tables 8.3 and 8.4 offer a numerical breakdown of the constitutional choices made by each type of authoritarian regime – monarchical, military, and civilian – for the first and last year of our sample period (1981 and 2008, respectively),[18] while Figures 8.5 through 8.7 depict the overall trend for each type of regime over the entire period.

[16] As of 2008, 83% of all weak constitutions belonged to authoritarian regimes.
[17] We do not include all possible geographic regions in the model because inclusion of all regions creates a sparse indicator problem and renders the logit model unable to reach convergence.
[18] For a detailed explanation of how constitutions were assigned to the five categories, see note 12 above.

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TABLE 8.3. *The constitutional choices of each regime type as of 1981*

	Strong constitution	Sham constitution	Modest constitution	Weak constitution	Average constitution
Authoritarian regimes (n=81):	7 (8.6%)	13 (16.0%)	6 (7.5%)	19 (23.5%)	36 (44.4%)
Monarchical (n=8):	*0 (0%)*	*0 (0%)*	*0 (0%)*	*4 (50%)*	*4 (50%)*
Military (n=36):	*7 (19.4%)*	*6 (16.7%)*	*3 (8.3%)*	*9 (25%)*	*11 (31%)*
Civilian (n=37):	*0 (0%)*	*7 (18.9%)*	*3 (8.1%)*	*6 (16.2%)*	*21 (26.8%)*
Democratic regimes (n=39):	12 (30.7%)	1 (2.6%)	10 (25.6%)	2 (5.1%)	14 (35.8%)
TOTAL (n=120):	19 (7.5%)	14 (11.7%)	16 (13.3%)	21 (17.5%)	50 (41.7%)

TABLE 8.4. *The constitutional choices of each regime type as of 2008*

	Strong constitution	Sham constitution	Modest constitution	Weak constitution	Average constitution
Authoritarian regimes (n=70):	15 (21.4%)	28 (40.0%)	5 (7.1%)	10 (14.3%)	12 (17.1%)
Monarchical (n=11):	*3 (27.3%)*	*1 (9.1%)*	*2 (18.2%)*	*2 (18.2%)*	*3 (27.3%)*
Military (n=23):	*2 (8.7%)*	*8 (34.8%)*	*2 (8.7%)*	*6 (26.1%)*	*5 (21.7%)*
Civilian (n=36):	*10 (27.8%)*	*19 (52.8%)*	*1 (2.8%)*	*2/36 (5.6%)*	*4 (11.1%)*
Democratic regimes (n=108):	62 (57.4%)	14 (13.0%)	7 (6.5%)	2 (1.9%)	23 (21.3%)
TOTAL (n=178):	77 (43.3%)	42 (23.6%)	12 (6.7%)	12 (6.7%)	35 (19.6%)

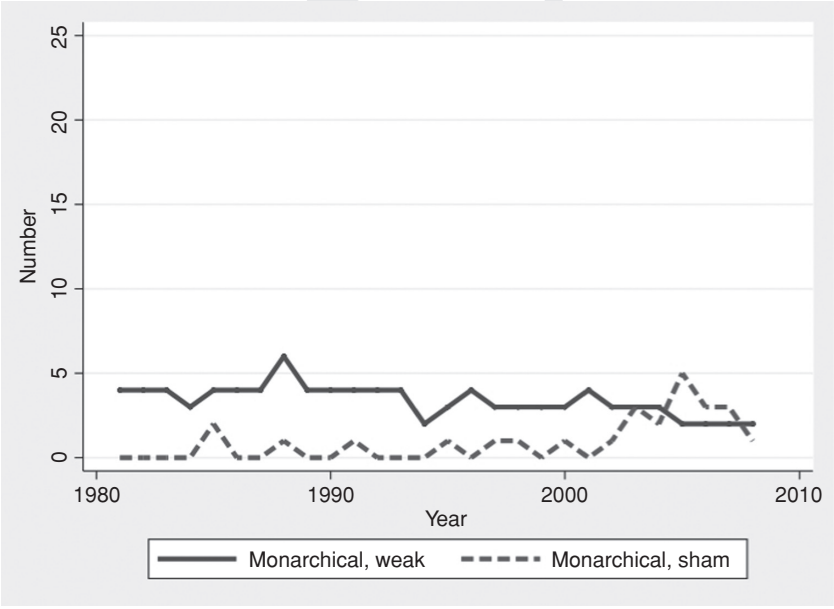

FIGURE 8.5. Percentage of Sham and Weak Constitutions Among Monarchical Regimes

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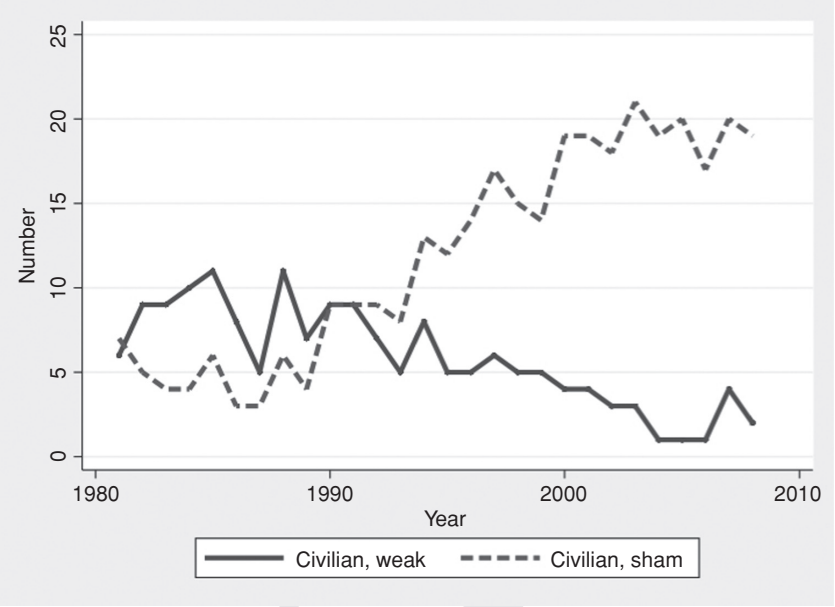

FIGURE 8.6. Percentage of Sham and Weak Constitutions Among Civilian Regimes

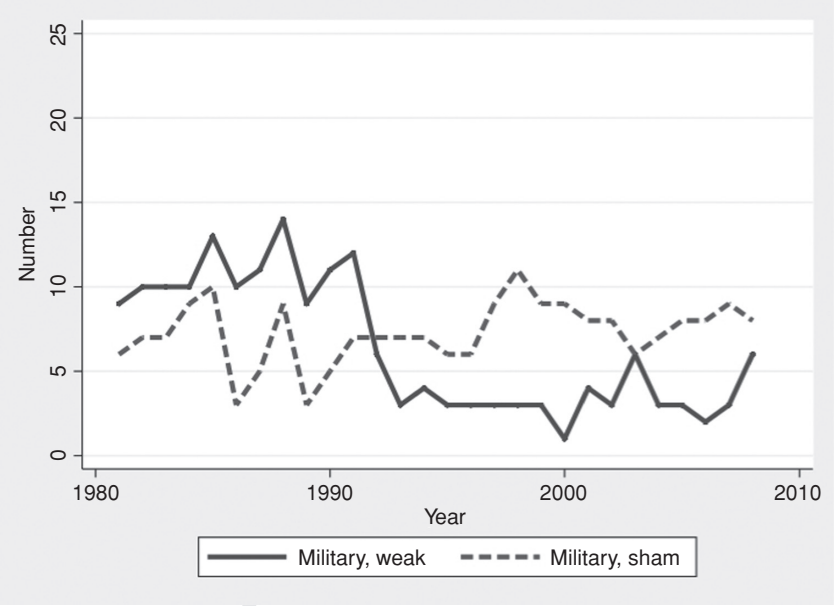

FIGURE 8.7. Percentage of Sham and Weak Constitutions Among Military Regimes

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On the whole, civilian dictatorships tend to favor sham constitutions over weak constitutions, whereas monarchical and military regimes have been more evenly divided between the two categories. As of 2008, 52.8 percent of civilian regimes fell in the sham category, as compared to 34.8 percent of military regimes and only 9.1 percent of monarchical regimes. Moreover, this tendency toward sham constitution-writing has been building over time. In 1981, out of thirty-seven civilian dictatorships, nine fell in the weak category and only six in the sham category. By 2008, however, out of a total of thirty-six civilian regimes, only two remained in the weak category, as compared to nineteen in the sham category.

This shift towards sham constitutions reflects the phenomenon of rights creep. In 1981, the constitutions of civilian dictatorships contained an average of 7.5 rights; by 2008, the average had grown to 11.2, an increase of nearly 50%. Unsurprisingly, many civilian regimes failed in practice to uphold this increasingly expansive set of rights and consequently shifted from the weak category to the sham category. Others, however, rose to the challenge that they had set for themselves and shifted instead in the direction of strong constitutionalism: as of 2008, ten of the thirty-six civilian regimes covered by our data were classified as possessing strong constitutions.

Historically, monarchical regimes have refrained from promising an abundance of constitutional rights, with the result that they have been characterized by a higher degree of constitutional candor than civilian regimes. As of 1981, the eight monarchical regimes in our data were evenly divided between the weak and average categories. However, this pattern has shown signs of reversal in recent years. By 2008, only two out of eleven monarchical regimes still belonged in the weak category; of the remainder, three fell in the strong category and one fell in the sham category. As in the case of civilian regimes, this shift away from weak constitutions reflects growth in the number of rights promised. Between 1981 and 2008, the average number of rights in monarchical constitutions increased by 37%, from 6.8 to 9.3.[19] This increase pushed a number of regimes from the weak category into either the strong category or the sham category, depending upon whether their real-world performance kept pace with their constitutional promises.

Like monarchical regimes, military regimes were historically characterized by weak constitutions, but like civilian regimes, they have shifted noticeably toward sham constitutions. Out of the thirty-six military regimes for which we have data as of 1981, nine (25 percent) had weak constitutions and six (17 percent) had sham constitutions, while another 11 (31 percent) possessed average constitutions. By 2008, however, the number of military regimes had declined to twenty-three, of which eight (35 percent) had sham constitutions and six (26 percent) had weak constitutions. This shift toward sham constitutionalism appears to reflect not only rights creep, but also a

[19] Because our analysis covers 15 rights, both figures are out of a maximum of 15.

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decline in the population of military regimes. From 1981 to 2008, the average number of rights in the constitutions of military regimes rose only modestly, from 8.8 to 9.3 (a 6% increase). Since the 1990s, however, there has also been a steep drop in the number of military regimes, and those that have survived have disproportionately been in the sham category. The decline in the population of military regimes can be seen in Figure 8.1.

Regression analysis confirms the existence of statistically significant differences among the three types of authoritarian regimes that cannot be explained by variables such as economic development or civil war. To explore the differences among authoritarian regime types, we estimate a modified version of the regression model set forth in Table 8.2. As in the earlier version of the model, the dependent variable is the type of constitution that a country adopts (strong, sham, modest, weak, or average), and the control variables included remain the same.[20] However, instead of a binary predictor variable that distinguishes only between democracies and dictatorships, we include a set of predictor variables that distinguish among the three strains of authoritarianism – monarchical, military, and civilian — as well as between democratic and authoritarian regimes. In lieu of regression coefficients, we again report relative risk ratios that capture the change in the probability of a country adopting a particular type of constitution relative to some baseline probability. The baseline for purposes of comparison in this case is the probability that a civilian dictatorship adopts an average constitution.

The regression results reported in Table 8.5 confirm that both monarchical and military regimes are more likely than civilian regimes to adopt weak constitutions. Holding all other variables constant, a state that switches from civilian dictatorship to monarchical rule becomes 15.4 times more likely than before to choose a weak constitution over an average constitution. The difference between military and civilian regimes is not as pronounced but still statistically significant: a state that changes from civilian dictatorship to military rule becomes 1.7 times more likely than before to choose a weak constitution over an average constitution. By a statistically significant margin, military regimes are also more likely than civilian regimes to choose modest constitutions. An authoritarian state that switches from civilian to military rule becomes 3.5 times more likely than before to choose a modest constitution over an average constitution. In absolute terms, however, modest constitutions are a rarity, and neither military regimes nor other states are very likely as a practical matter to adopt constitutions that understate their actual commitment to rights.

[20] With one minor exception, these modifications of the model did not change any findings with respect to the control variables. In the modified model, the regional variable for South Asia reaches a conventional level of statistical significance ($p = 0.10$), whereas in the original model, it falls slightly short ($p = 0.12$). In both models, however, the variable has the same predicted effect: a country located in South Asia is more likely than those in other regions to choose an average constitution over a weak constitution.

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TABLE 8.5. *Differences among strains of authoritarianism: relative-risk ratios (computed from multinomial logit regression)*

	1 Sham constitution	2 Strong constitution	3 Modest constitution	4 Weak constitution
Monarchical regime	0.612	1.922	1.093	15.401***
Military regime	0.967	0.778	3.250**	1.695***
Democratic regime	0.227***	1.723	1.773	0.116***
GDP per capita (ln)	0.563***	0.759*	1.839**	0.918
Population (ln)	1.846***	1.392**	1.588***	1.622**
Sub-Saharan Africa region	0.237**	0.199***	2.810	1.211
South Asia region	0.692	0.119***	0.880	0.043**
North Africa/Middle East region	0.691	0.152**	1.266	0.280
Civil war	4.556***	0.575	0.072**	1.370
Time trend	1.113***	1.084***	0.996	0.98

$n = 3{,}385$
*** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

These findings support our overarching hypothesis that authoritarian regimes face competing incentives when deciding what constitution-writing strategy to pursue, and that different types of authoritarian regimes possess distinctive characteristics that lead them to weigh these incentives differently. On the one hand, adoption of a constitution that contains a plethora of rights can bolster a regime's legitimacy by appealing to the ideological sensibilities of domestic and international constituencies. On the other hand, such a strategy is not without its costs. Adoption of a sham constitution can backfire by depriving regime members of a device for overcoming internal coordination problems while simultaneously providing regime opponents with a coordination device of their own.

For military and monarchical regimes, the costs of sham constitutionalism may outweigh the benefits, which would explain their propensity for adopting candidly weak constitutions. For civilian or party-based regimes, however, the strategic calculus appears to be different. Civilian rulers possess neither the traditional claims to authority enjoyed by monarchs nor the convenient recourse to force enjoyed by military rulers and must therefore find other ways of consolidating their rule. Adoption of a constitution that incorporates a wide range of popular human rights is one strategy by which a civilian regime can muster domestic and international approval. Consistent with what we have termed the world society and domestic political economy hypotheses, our findings support the view that civilian regimes face greater pressure than either monarchical or military regimes to adopt formal constitutions that satisfy the expectations of domestic and international audiences.

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CONCLUSION

There can be a considerable gap between what a country promises in its constitution and how it actually behaves (Law and Versteeg 2013). Not surprisingly, our analysis reveals this gap to be larger in authoritarian states than in democratic states: authoritarian regimes are less likely to uphold the rights found in their constitutions. An obvious explanation for this finding is that authoritarian regimes have a tendency to promise rights for the sake of appearances rather than out of genuine commitment.

It is also clear, however, that not all authoritarian regimes adopt sham constitutions. Many choose to write constitutions that are relatively candid about their lack of respect for a variety of basic rights. The notion that authoritarian regimes approach constitution-writing as merely an exercise in cheap talk or window dressing cannot account for the existence of weak or modest constitutions that explicitly provide low levels of rights protection.

We find, moreover, that this form of constitutional candor is associated with specific varieties of authoritarianism. By a statistically significant margin, monarchical and military regimes are more likely than civilian regimes to adopt weak constitutions that promise relatively few rights. We attribute this pattern to strategic constitution-writing behavior rooted in the distinctive features of each type of regime. Even for the most ruthless of authoritarian regimes, there are benefits to constitutional candor. Adoption of a weak but descriptively accurate constitution can help a regime to solve internal coordination problems, whereas adoption of a sham constitution filled with empty promises can backfire by coordinating opponents of the regime instead. In the case of civilian regimes, however, these considerations may be outweighed by a heightened need for ideological legitimacy that is served by promising a variety of rights on paper.

Our findings highlight several questions for further research. One such question is whether authoritarian regimes are more likely to comply with the structural provisions of their constitutions, such as those pertaining to the allocation of power between legislative and executive institutions or between national and subnational governments, than with the rights-related provisions considered in this study. Given that authoritarian regimes are defined in large part by their control over society, it is plausible to think that they are more likely to violate provisions limiting their power over individuals than provisions concerning their internal structure (Elkins et al. 2009: 55; Law 2011: 282).[21] Although some studies suggest that constitutional provisions relating to legislative power and federalism tend to reflect actual practice, it is questionable whether the same could be said of other structural provisions, such as those concerning judicial independence (Feld and Voigt 2006: 267; Law 2011).

[21] Indeed, a number of studies have found a negative relationship between formal rights protection and actual rights observance (Boli-Bennett 1976; Keith 2002; Law and Versteeg 2011; Pritchard 1986).

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Another question concerns the impact of political competition on authoritarian constitutionalism. As various scholars have observed, not all authoritarian states are devoid of political competition (Ginsburg and Moustafa 2008; Levitsky and Way 2010; Schedler 2009). Consistent with the logic of the domestic political economy hypothesis, authoritarians exposed to electoral pressures may make constitutional concessions in the form of more rights. Although a full exploration of this hypothesis is beyond the scope of this chapter, our tentative analysis of the data suggests that authoritarian states with multiple political parties are no more likely to adopt sham or weak constitutions than authoritarian states with only a single party.[22] The extent to which authoritarian regimes make empty constitutional promises may ultimately depend more on the type of authoritarian regime at issue than on the existence of a modicum of political competition.

APPENDIX 1

DE JURE RIGHT	*DE FACTO* RIGHT
I. Personal Integrity	
1. Prohibition of Arbitrary Arrest and/or Detention 0 = not mentioned in constitution 1 = mentioned in constitution	*1. Disappearances* 0 = disappearances occur frequently 0.5 = disappearances occur occasionally 1 = no disappearances are reported
2. Prohibition of Torture 0 = not mentioned in the constitution 1 = mentioned in the constitution	*2. Torture* 0 = torture occurs frequently 0.5 = torture occurs occasionally 1 = no torture is reported
3. Right to Habeas Corpus 0 = not mentioned in the constitution 1 = mentioned in the constitution	*3. Extrajudicial Killings* 0 = extrajudicial killings occur frequently 0.5 = extrajudicial killings occur occasionally 1 = no extrajudicial killings are reported

[22] We performed a test of the difference between one-party and multi-party authoritarian regimes by estimating a modified version of the multinomial logit model reported in Table 8.1. Once again, the dependent variable is the type of constitution that a country adopts, and the control variables remain the same. However, we replaced the binary autocracy predictor variable with a set of predictor variables that distinguish among one-party authoritarian states, multi-party authoritarian states, and democratic states. The data that we use to distinguish between one-party and multi-party authoritarian states is drawn from Henisz (2002). According to this data, 36% of the authoritarian states in our data are multi-party states. Estimation of this model revealed no statistically significant difference between the two types of authoritarian states in terms of their propensity to adopt sham or weak constitutions.

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4. Fair Trial Rights 0 = constitution contains fewer than three of the following eight trial-related rights: the right to counsel, the right to present a defense, a presumption of innocence, the right to an appeal, the right to an interpreter, protection from ex post facto laws, a public trial; and the right to a timely trial[23] 1 = constitution contains at least three of the preceding eight trial-related rights	*4. Fair Trial Rights* 0 = a score of 4 out of 4 on Hathaway (2002)'s aggregated fair trial index (the worst possible score) 0.5 = a score of 2 or 3 out of 4 on the aggregated fair trial index 1 = a score of 1 out of 4 on the fair trial index (the best possible score)
5. Prohibition of Death Penalty 0 = not mentioned in the constitution 1 = constitution explicitly prohibits the death penalty	*5. Death Penalty Abolition* 0 = death penalty is allowed 0.5 = death penalty is abolished for ordinary crimes 1 = death penalty is abolished for all crimes
II. Civil and Political Freedoms	
6. Freedom of Assembly and/or Association 0 = neither right is mentioned in the constitution 1 = either or both rights are mentioned in the constitution	*6. Freedom of Assembly and/or Association* 0 = freedom of assembly and/or association is severely restricted or denied completely to all citizens 0.5 = freedom of assembly and/or association is limited for all citizens or severely restricted or denied for select groups 1 = freedom of assembly and/or association is virtually unrestricted and freely enjoyed by practically all citizens
7. Freedom of Movement 0 = not mentioned in the constitution 1 = mentioned in the constitution	*7. Freedom of Movement* 0 = domestic travel is severely restricted 0.5 = domestic travel is somewhat restricted 1 = domestic travel is unrestricted
8. Freedom of Religion 0 = not mentioned in the constitution 1 = mentioned in the constitution	*8. Freedom of Religion* 0 = government restrictions on religious practices are severe and widespread 0.5 = government restrictions on religious practices are moderate 1 = government restrictions on religious practices are practically absent

(*continued*)

[23] The mean number of fair trial rights found in all constitutions from 1946 to 2010 is 3.47.

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9. Right to Vote	*9. Free and Fair Elections*
0 = not mentioned in the constitution 1 = mentioned in the constitution	0 = right to self-determination through free and fair elections does not exist under law or in practice 0.5 = although citizens have the legal right to self-determination, there are some limitations on the exercise of this right in practice, and political participation is only moderately free and open 1 = political participation is very free and open, and citizens have the right to self-determination through free and fair elections in both law and practice
10. Freedom of the Press and/or Expression	*10. Freedom of Speech*
0 = neither freedom is mentioned in the constitution 1 = constitution protects either or both freedoms	0 = complete government censorship of the media 0.5 = some government censorship of the media 1 = no government censorship of the media
III. Socioeconomic and Group Rights	
11. Right to Health	*11. Life Expectancy at Birth*
0 = not mentioned in the constitution 1 = mentioned in the constitution	0 = life expectancy is less than 52 years[24] 0.5 = life expectancy is between 52 and 72 years[25] 1 = life expectancy is more than 72 years
12. Right to Education	*12. Literacy Rates*
0 = not mentioned in the constitution 1 = mentioned in the constitution	0 = less than 36%[26] of the population is literate 0.5 = literacy rate is between 36% and 93%[27] 1 = more than 93% of the population is literate

[24] Fifty-two years is the twenty-fifth percentile on the life expectancy measure.
[25] Seventy-two years is the seventy-fifth percentile on the life expectancy measure.
[26] Thirty-six percent is the twenty-fifth percentile on the literacy rates measure: in other words, only 25% of countries had a literacy rate lower than 36%.
[27] Ninety-three percent is the seventy-fifth percentile on the literacy rates measure.

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13. Gender Equality in Marriage 0 = not mentioned in the constitution 1 = mentioned in the constitution	*13. Women's Social Rights* 0 = the law contains no social rights for women, and systematic discrimination based on sex may be embedded in the legal system; or, women enjoy some social rights by law, but they are not effectively enforced 0.5 = the government effectively upholds some social rights of women in practice but still allows a low level of discrimination against women in social matters 1 = nearly all women's social rights are guaranteed by law, and the government fully and vigorously enforces these laws in practice
14. Gender Equality in Labor Relations (e.g., Equal Wages for Equal Work) 0 = not mentioned in the constitution 1 = mentioned in the constitution	*14. Women's Economic Rights* 0 = the law contains no economic rights for women, and systematic discrimination based on sex may be embedded in the legal system; or, women enjoy some economic rights by law, but they are not effectively enforced 0.5 = the government effectively upholds some economic rights of women in practice but still allows a low level of discrimination against women in economic matters 1 = nearly all women's economic rights are guaranteed by law, and the government fully and vigorously enforces these laws in practice
15. General Protection of Minority Rights, or Right of Minorities to Be Represented in Government 0 = not mentioned in the constitution 1 = constitution either contains a general protection of minority rights or explicit provision for minorities to be represented in government	*15. Minority Rights* 0 = government policy substantially restricts the largest minority group's political participation relative to other groups; or, the largest minority group is substantially underrepresented because of prevailing social practice by dominant groups and a lack of adequate remedial policies 0.5 = the largest minority group experiences substantial underrepresentation in political office and/or low levels of political participation, but policies are in place to improve the group's political status; or, the largest minority group experiences substantial underrepresentation even though government policy is neutral 1 = no discrimination in the political system against minorities

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PART IV

Consequences of Authoritarian Constitutions

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9

The Role of Presidential Power in Authoritarian Elections

*Jennifer Gandhi**

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INTRODUCTION

Authoritarian regimes usually operate under an official legal order, either maintaining a past democratic constitution (e.g., the 1935 constitution during Marcos's early years in the Philippines) or creating a new constitution (e.g., Yushin constitution under Park in South Korea). While constitutions in these contexts often are viewed as "shams" or a form of "window dressing," this may, in fact, not always be the case. Barros (2002) details how the 1980 constitution in Chile – the military's own creation – constrained the junta and ultimately paved the way for the transition to democracy. Albertus and Menaldo (2011), more generally in Latin America, find that some dictators construct greater institutional constraints to their authority through constitutions and, as a result, survive in power longer. In this way, constitutions are another power-sharing device that enables authoritarian leaders and elites to prolong their rule (Myerson 2008; Svolik 2009).

Incumbents, however, are not the only ones influenced by constitutional rules under authoritarianism. Constitutions also shape the strategies of opposition parties when they compete in authoritarian elections. While authoritarian incumbents attempt to use their "menu of manipulation" to ensure electoral victory, opposition parties must decide how best to challenge these regimes (Schedler 2006). One decision parties must make is whether to form preelectoral pacts in an effort to defeat the incumbent (Howard and Roessler 2006; Van de Walle 2006). In the case of presidential elections, coalitions form when several parties agree to support

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one candidate for the election in exchange for cabinet positions and other political appointments.[1]

Opposition parties in authoritarian regimes sometimes manage to maintain a cohesive front in challenging incumbents. In the Philippines, for example, Salvador Laurel, head of the largest opposition party, agreed to support Corazon Aquino's candidacy in snap presidential elections called by Ferdinand Marcos in 1985. In Kenya, opposition leaders formed the National Rainbow Coalition (NARC) in support of Mwai Kibaki, leading to his victory in 2002 over the regime-sponsored candidate, Uhuru Kenyatta. Yet for every instance of successful coalitions, there are spectacular cases of noncoordination among opposition parties, and these failures enable authoritarian incumbents to use elections to perpetuate their rule. In South Korea, for example, neither Kim Dae Jung nor Kim Young Sam was willing to yield in his quest to become president, clearing the way for the regime candidate, Roh Tae Woo, to win the 1988 election with only 36 percent of the vote. In the 1992 presidential elections in Kenya, seven opposition candidates ran against the fourteen-year incumbent, Daniel Arap Moi, allowing him to squeak by with 37 percent of the vote.

The variation in opposition unity points to an underlying tension facing these parties. As Przeworski (1991: 67) observes, the struggle for democracy "creates a dilemma: to bring about democracy, anti-authoritarian forces must unite against authoritarianism, but to be victorious under democracy, they must compete with each other. Hence, the struggle for democracy always takes place on two fronts: against the authoritarian regime for democracy and against one's allies for the best place under democracy." Constitutions under authoritarianism influence how parties decide to resolve this tension.

The chapter proceeds as follows. In the next section I introduce the empirical puzzle of preelectoral coalitions among opposition parties. In the third section I discuss how constitutions can influence the problem of coordination confronting opposition parties. In the fourth section I provide an empirical test of the argument followed by a discussion of the results. The chapter closes with a brief conclusion.

ELECTIONS UNDER AUTHORITARIANISM

Multiparty elections in nondemocracies are increasingly common. Yet these are elections that "violate the liberal-democratic principles of freedom and fairness so profoundly and systematically as to render elections instruments of authoritarian rule" (Schedler 2006). Some of the ways in which nondemocratic incumbents violate the spirit of "free and fair" elections include manipulation of electoral rules,

[1] In legislative coalitions, preelectoral coalitions form when parties agree to joint lists of candidates or to not run against each other in electoral districts.

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state control of the media and other campaign resources, intimidation of candidates and their supporters, and electoral fraud (Levitsky and Way 2010).

Against this backdrop, opposition parties must consider how to effectively compete against an authoritarian incumbent. One way is to form preelectoral coalitions. A preelectoral coalition is an agreement among political parties to coordinate their efforts to maximize their seats and/or votes in elections. Coordination in elections among opposition parties can take a variety of forms, including the issuing of joint statements or the creation of joint electoral lists for legislative elections. In the context of presidential elections, it requires opposition parties to unite behind a single candidate. To pursue such actions, opposition parties contract with each other, and in deciding whether to "sign" a contract with others, each party must weigh the costs and benefits of doing so.

The decision to form a preelectoral coalition is an important one because it directly influences election results, which, in turn, may affect the stability of the authoritarian regime. Even though autocratic incumbents use manipulation, fraud, and violence to control electoral processes, opposition parties sometimes manage to maintain a cohesive front and go on to win. Coalitions result in Aquino's victory in the Philippines and Kibaki's in Kenya. Howard and Roessler (2006) argue that more generally, preelectoral coalitions lead to liberalizing outcomes, including those that fall short of a full democratic transition. Before understanding the effects of coalitions, however, it is useful to understand why preelectoral coalitions would form in the first place (Van de Walle 2006). While this has been studied in the context of democracies (Carroll and Cox 2007; Golder 2006), it has been rarely examined in the context of nondemocracies.

Table 9.1 provides cases in which the regime candidate, facing more than one opposition candidate, received less than 50 percent of the total votes in a presidential election. Assuming that voters who cast their ballots for separate opposition candidates would have supported a single representative of the opposition, coordination among opposition parties would have resulted in an opposition victory.

Probably some voters made strategic decisions in supporting the incumbent, preferring not to bear the costs of opposing the regime when the opposition was so divided and unlikely to win. These voters might have switched their vote to an opposition candidate who headed a unified coalition. Their actions could have made the difference in a number of other elections in which the regime candidate obtained just more than a majority. All together, the regime candidate polled less than 60 percent of the vote in 43 percent of the elections. That the regime allowed for opposition candidates to come so close to achieving victory indicates that in these cases, incumbents may have been willing to step down. These cases beg the question: Why did opposition parties fail in forming a united electoral front? Or more generally, under what conditions do opposition parties form coalitions to present a unity candidate in presidential elections?

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TABLE 9.1. *"Failures" to form opposition coalitions in authoritarian presidential elections, 1946–2008*

Country-year	Regime candidate*	Regime votes, percentage of total**	Opposition candidates, number	Runoff
Angola 1992	Jose Eduardo dos Santos	49.6	10	No
Belarus 1994	Alyaksandr Lukashenko	44.8	4	Yes
Bolivia 1979	Hernan Siles Zuazo	36	7	No
Bolivia 1980	Hernan Siles Zuazo	38.7	12	No
Bosnia-Herzegovina 1996	Alija Izetbegovic	42.3	3	No
Burkina Faso 1978	Sangoule Lamizana	42.2	3	Yes
Cameroon 1992	Paul Biya	40.0	5	No
Chad 1996	Idriss Deby	43.8	14	Yes
Comoros 2002	Azali Assoumani	39.8	8	Yes
Dem. Rep. of Congo 2006	Joseph Kabila	44.8	32	Yes
El Salvador 1972	Arturo Armando Molina	43.4	3	No
Guatemala 1958	Miguel Ydigoras Fuentes	40.8	3	No
Guinea-Bissau 1994	Joao Bernardo Vieira	46.2	7	Yes
Honduras 1954	Tiburcio Carias Andino	30.8	2	No
Iran 2005	Mahmoud Ahmadinejad	20.3	6	Yes
Kenya 1992	Daniel Arap Moi	36.6	7	No
Kenya 1997	Daniel Arap Moi	40.4	14	No
Korea, South 1963	Park Chun Hee	46.6	4	No
Korea, South 1987	Roh Tae Woo	35.9	4	No
Korea, South 1992	Kim Young Sam	42	6	No
Moldova 1996	Mircea Snegur	38.7	4	Yes
Niger 1993	Mamadou Tandja	34.3	7	Yes
Niger 1999	Mamadou Tandja	32.3	6	Yes
Nigeria 1983	Shehi Shegari	47.5	5	No
Panama 1948	Domingo Diaz Arosemena	38.5	4	No
Panama 1984	Nicolas Ardito Barletto	46.9	6	No
Peru 2000	Alberto Fujimori	49.9	8	Yes
Zambia 2001	Levy Patrick Mwanawasa	29.1	10	No
Zambia 2006	Levy Patrick Mwanawasa	43.0	4	No
Zambia 2008	Rupiah Banda	40.1	3	No
Zimbabwe 2008	Robert Mugabe	43.2	3	Yes

* Refers to either the incumbent or the candidate supported by the incumbent who ultimately wins the election

** For cases in which a runoff occurs, refers to the regime candidate's vote share in the first round

THE PROBLEM OF COOPERATION

Consider a simplified version of the world in which there are two opposition candidates (or parties), *A* and *B*, who are deciding whether to form a coalition in an authoritarian election. Because they are contesting a presidential election,

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formation of a coalition will require one of the parties (say, *B*) to agree to not contest the election and support the other party's candidate (*A*) as the opposition standard bearer. In exchange, *B* will receive an important ministry in *A*'s cabinet should *A* win the election. This is the nature of the power-sharing agreement that underlies the electoral coalition.

Assume that the candidates are located close enough to each other in the policy space so that ideology does not present an obstacle to coordination and that the regime's actions are constant so that any type of action by the opposition parties will result in a cost that is borne equally by both parties. In other words, the expected value of pursuing cooperative action for either party is determined primarily by what the other party does (rather than what the authoritarian regime might do).

If opposition candidate *A* wins the election, he becomes president. Under the preelectoral agreement, *B* becomes a cabinet member. Whether *A* and *B* actually achieve office depends on the voters. If voters do not support *A* in the election, he does not become president, which, in turn, means that *B* cannot become a minister. But while *A*'s capture of political office depends only on the voters, in order for *B* to obtain political power, he relies also on *A* to appoint and keep him as a minister. As a result, *B* should enter into a preelectoral agreement with *A* only if he believes that *A* can and will honor their original bargain once *A* wins the presidency.

Why is abiding by the terms of the original agreement so important? Presumably, the preelectoral agreement over the division of political offices reflects the parties' respective bargaining powers: *A* became the presidential candidate and *B* was only promised a ministry because *A* is a more powerful candidate/party than *B*. Power, however, may also be a function of political office. In presidential systems, the holding of formal office may enable a political leader to maintain a following through access to informal networks and the distribution of patronage (Hale 2011). Upon *A*'s victory, then, *B*'s concern is whether he will obtain the position he was promised in order to maintain the balance of power between the two parties. If *A* does not appoint *B* to office, *B*'s power will diminish from *before* to *after* the election. What is problematic for the candidates/parties, then, is the postelectoral enforcement of their preelectoral agreement over the distribution of political offices. The degree to which enforcement is problematic affects how hard parties will bargain in the first place (Fearon 1998). The enforcement problem may sow enough seeds of distrust among opposition parties that coalitions do not form.

Indeed, the inability to trust their bargaining partners is endemic in negotiations among opposition parties in authoritarian regimes. In 2005, the chief opposition party in Zimbabwe, the Movement for Democratic Change (MDC), split into two factions because of a disagreement over the party's decision to contest Senate elections that year. After a close internal party vote resulted in the decision to participate (rather than boycott), party leader Morgan Tsvangirai demanded the vote be ignored, precipitating the departure of Arthur Mutambara (and his followers) amid accusations that Tsvangirai was behaving undemocratically. Mutambara's fears

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appeared to be confirmed when Trudy Stevenson, a parliamentarian and member of his faction, accused Tsvangirai's supporters of a machete attack in 2006. As one political commentator observed: "If you are prepared to beat people up when you are still in opposition, what would happen if you have the state machinery at your disposal – you have the CIO, the army, police – would anybody be able to stand up against you?" (Nyaira 2006). When presidential elections in 2008 presented the opposition with the opportunity to take down a weakened Robert Mugabe, the two sides could not find a way to address their mutual mistrust. Talks to create a coalition broke down, and both Tsvangirai and Mutambara offered themselves as presidential candidates. "Had the MDC entered the presidential round in lockstep with Mutambara, Tsvangirai might have got the crucial extra votes to win the presidency outright" in the first round (Chan 2008).

The fears and failures of opposition forces in Zimbabwe are experienced by opposition challengers in many authoritarian states. In Kyrgyzstan, for example, a comprehensive survey of opposition leaders from several parties found that "a lack of trust of other members of the opposition (an inability to take others at their word)" complicates efforts to cooperate (Huskey and Iskakova 2010). Similarly, in Egypt, when a member of an opposition party was asked why his party did not cooperate with others in protesting the 1995 election results, he answered: " . . . but how can we work with other groups when we don't know about their intentions?" (Sahgal 2008: 130–1). Finally, the Democratic Party (DP) in Uganda declined to join an opposition formation, the Inter-Party Coalition (IPC), in its attempt to defeat the incumbent, Yoweri Museveni, in a 2011 presidential contest. The DP's candidate, Norbert Mao, explained the controversial decision, claiming that while his party and those in the IPC shared similar preferences on many issues, he was forced to ask himself: "Is the solution only to change the presidential portrait that hangs on a wall?"[2] Opposition leaders from Zimbabwe to Kyrgyzstan to Egypt to Uganda voice the same concern: the uncertainty about the future intentions and behavior of potential partners can create an impediment to cooperating when challenging authoritarian incumbents in elections.

THE ROLE OF CONSTITUTIONS

How do authoritarian constitutions enter this picture? Whether the future occupant of the presidency can and will abide by the power-sharing agreement depends on the type and strength of the powers attached to the office of chief executive. Because pre-electoral coalitions rest on promises of political offices, the nature of the president's power to select his cabinet or make other political appointments is important. Some presidents have the power to unilaterally appoint cabinet members, while others face

[2] "History Will Absolve Us on IPC Question" (http://www.democraticparty.ug/; downloaded November 28, 2010).

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institutional constraints on their powers to choose (usually in the form of legislative participation). What presidents endowed with strong appointment powers may do is unclear. On the one hand, the ability to unilaterally make political appointments may enable the new president to better fulfill the preelectoral agreement. Without having to negotiate with the assembly, *A* easily can appoint *B* to the cabinet. Knowing this, *B* should enter into a preelectoral coalition when he expects *A* to inherit a presidency with strong appointment powers. On the other hand, unilateral appointment power implies unchecked power for the president, which possibly makes it easier for him to renege on a preelectoral deal. Anticipating that this may happen, *B* should not enter into agreement with *A* under strong presidential powers of appointment. Indeed, the quote from Mutambara's supporter – "If you are prepared to beat people up when you are still in opposition, what would happen if you have the state machinery at your disposal . . . " – suggests that parties worry about the president's power to renege – and in even more sinister forms. If the constitution provides the president with unilateral control over the coercive apparatus of the state, parties may worry that a victory of one of their peers may just lead to another dictatorship.

In order for current constitutional rules to serve as a cue to opposition parties about the type of presidency they stand to inherit, parties must anticipate that these are the rules with which they might govern. While major constitutional change commonly accompanies democratic transitions, it usually seems to occur before elections. For the 1989 to 2006 period, for example, of the forty-nine transitions to democracy, there were twenty-one cases in which a new constitution was adopted. Yet in seventeen of these cases, the new constitution was adopted before the presidential election, thereby allowing parties to condition their expectations on the new document. In the remaining cases, the new government governs with the old authoritarian constitution, but amendments often occur before the election. The timing of these legal changes enables parties to use constitutional provisions at the time of the election to form their expectations about the strength of the presidency they stand to inherit after the election.

If parties are intent on betraying their coalition partners and establishing a new dictatorship, why would they allow the constitution to constrain their behavior in doing so? In other words, why would parties expect that these provisions would be anything more than "parchment boundaries" for a new president? A new president comes to office under the burden of having to construct a new regime and gain legitimacy for it. As a result, while he may want to pass on advantages to his political forces, he may feel constrained by constitutional rules that may serve as a coordinating device for potential opposition within his regime (Weingast 1997). If the president exceeds constitutional limits on his power in trying to gain political advantages, his transgressions may serve to mobilize opposition to his rule.[3]

[3] Of course, if some candidates or parties already have the intention of dismantling their opponents once they come to power, the constitutional powers – weak or strong – will do little to constrain them. If this is the case, we should observe no relationship between legal rules and preelectoral coalitions.

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The notion that strong presidential powers impede coordination among the opposition is consistent with another theory of coalition formation. It may be the case that opposition parties run separately because each views the office of the presidency as a prize too large to give up. Because formation of a preelectoral coalition for a presidential election requires some parties to give up their presidential aspirations, when the office comes endowed with strong powers, parties may be unwilling to make the sacrifice, especially if they each believe they have a good chance of winning. While this theory produces a similar prediction – that strong presidential powers should be correlated with nonformation of electoral coalitions – it fails to capture the mistrust that appears to characterize the attitudes of opposition parties toward their peers.

EMPIRICAL ANALYSIS

To examine the relationship between presidential powers and coalition formation, I examine all direct multicandidate presidential elections from 1946 to 2008 held under the auspices of an incumbent who came to power through nondemocratic means (i.e., coup, revolution, *autogolpe*). The sample includes 264 elections from eighty-five countries.[4] In each presidential election, there must be at least one challenger, and both political parties and electoral coalitions must be legal.[5] To identify authoritarian elections, I follow Przeworski et al.'s (2000) minimalist definition.[6] Because regime type of a country is coded as of December 31 of the year, the sample includes all presidential elections in dictatorial years and in the first year of a democratic spell if the election occurred prior to the regime change. This procedure ensures that all elections in the sample were held under the auspices of authoritarian incumbents.

The dependent variable is a proxy to measure the degree of cooperation among opposition parties: the vote share of the largest opposition party in the first round of the election (if there are two rounds).[7] If parties do not enter or withdraw from the race in order to support a unity candidate, the vote share obtained by this candidate should be larger (Van de Walle 2006).[8] Voting results come from Nohlen et al. (1999, 2002, 2005), the African Elections Database, and the IFES Election Guide.

4 For a list of the countries and election years, see Appendix I.

5 Therefore, plebiscites and referenda on the incumbent are not included. The condition that parties and coalitions must be legal excludes thirty-eight elections from the list in Appendix I.

6 Nondemocracies include all regimes that (1) do not have competitive legislative elections, (2) do not have competitive executive elections, (3) do not allow for more than one political party, and/or (4) do not allow for alternation in office. For an updated version of the data, see Cheibub and colleagues (2010).

7 In presidential elections, it is not obvious what should be the universe of all possible coalition partners because any single individual can declare himself/herself as a candidate. Therefore, creating dichotomous measures of cooperation between party dyads as Golder (2006) does in examining democratic legislative elections is not feasible.

8 Descriptive statistics of all variables in the analysis are in Appendix II.

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The power of the presidency that opposition parties expect to inherit is found in the constitution under which the election occurs. Given that negotiations over the formation of preelectoral coalitions usually focus on the distribution of political office, I include the power of the president to appoint and dismiss cabinet ministers. *Cabinet appointment* is a dichotomous measure, taking the value of 1 when the president has unilateral power to approve his ministers, 0 when he must share this power with other institutions (e.g., legislative chambers, the majority party) or must act on the basis of electoral results. *Cabinet dismissal* is a dichotomous indicator with the value of 1 when the president has unilateral power to dismiss members of his cabinet, 0 otherwise. These measures of presidential power are constructed from data from the Comparative Constitutions Project. If strong presidential powers are necessary to enable opposition winners to fulfill their preelectoral commitments, then the sign of these variables should be positive. If, however, opposition parties expect that unilateral control over political offices will allow the winner to renege, they may be less likely to enter into an agreement under strong presidential powers. Negative signs on these indicators would constitute evidence of a commitment problem among opposition parties.

One indicator of the president's coercive powers is his institutional capacity to declare states of emergency. *Emergency power* is dichotomous, coded 1 when the president has sole power to declare a state of emergency, 0 when he must share this power with another institution (usually a legislature and sometimes an unelected body, such as a national security council). This variable also is constructed from information from the Comparative Constitutions Project. Since the coercive powers of the state would be used only to renege on any preelectoral agreement, the variable is expected to take a negative sign.

Table 9.2 provides a first look at the relationship between presidential powers and opposition coordination. The table shows the mean vote share of the largest opposition candidate under weak and strong powers of appointment, dismissal, and state of emergency. Consistent with the theory, the average vote share of the largest opposition candidate is significantly larger when the president's powers to dismiss cabinet members and to call a state of emergency are weak. When the president's powers to appoint are weak, the average vote share is higher, although the difference-in-means is not significantly different from zero.

I use regression analysis to determine whether *de jure* presidential powers still have an effect after controlling for electoral institutions, social cleavages, past interactions among the parties, and actions by the regime.

Parties trying to form a coalition for the presidential election may be helped or hindered by negotiations over concurrent legislative elections. On the one hand, forming a legislative preelectoral coalition should be easier than a presidential one because of the divisibility of gains in the former. So the momentum gained from forming a legislative coalition may spill over into concurrent presidential elections.

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TABLE 9.2. *Difference-in-means of opposition vote share under weak and strong presidential powers*

	Vote share of largest opposition candidate		
	Mean	Std error	N
Weak appointment power	24.738	1.930	76
Strong appointment power	27.433	1.406	124
Combined samples	26.409	1.140	200
Difference between samples	–2.695	2.388	
Weak dismissal power	28.705	2.038	70
Strong dismissal power	25.173	1.361	130
Combined samples	26.409	1.140	200
Difference between samples	3.531*	2.451	
Weak emergency power	30.613	2.276	60
Strong emergency power	25.704	1.230	163
Combined samples	27.025	1.095	223
Difference between samples	4.909**	2.587	

For independent samples with unequal variances
* One-tailed test ($t = 1.4406$; $p = 0.0760$); ** One-tailed test ($t = 1.8973$; $p = 0.0304$)

On the other hand, concurrent elections mean that parties may feel compelled to form a coalition encompassing both elections. An increasing number of issues on the table may present more potential stumbling blocks for parties attempting to reach agreement. *Concurrent election*, a dichotomous variable coded 1 if there are presidential and legislative elections within twelve months of each other, 0 otherwise, is included.

Provisions regarding runoffs if no candidate succeeds in securing a majority in the first round should affect the decision of candidates to enter in the first place. Runoff elections should result in more presidential challengers, or less opposition coordination, for two reasons. First, under plurality, only one candidate can win, while under two-round runoff, two can move past the first stage. As a result, a challenger who might anticipate winning enough votes for second place might not enter an election with plurality rule but will if he knows that a second round is possible (Cox 1997). Second, candidates might enter the race with the goal of obtaining enough votes so that they can bargain for benefits in exchange for their endorsement (Jones 1999). With the possibility of reaching a second round, these candidates might be in a better position to bargain for benefits. *Runoff*, a dichotomous variable indicating whether electoral rules allow for a second-round runoff among top candidates from the first round, 0 for plurality formula, is expected to have a negative impact on the vote share of the largest opposition candidate.[9]

[9] Second-round polling usually consists of just the top two vote getters from the first round but in rare cases may include more than just these two (e.g., Tanzania). These unusual cases are included on

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Electoral rules work in tandem with social cleavages to determine the number of competitors in elections (Cox 1997; Mozaffar et al. 2003; Ordeshook and Shvetsova 1994). A greater number of social cleavages, all else being equal, should encourage the entrance of more opposition candidates. To capture the effect of social cleavages on opposition strategies, *Ethnic fractionalization* is included. It is constructed as $1 - \Sigma(p_i^2)$ where p_i is the share of the population that belongs to ethnic group i and is from Alesina and Ferrara (2005). It is expected to have a negative effect on the largest party's vote share.

The interaction among opposition parties probably differs in countries in which elections take place infrequently from those in which contests for the presidency are regular events. In countries such as Burundi, Cambodia, Egypt, and Uruguay, presidential elections under the auspices of an authoritarian incumbent occurred only once during the postwar period. In contrast, in states such as Azerbaijan, Gambia, Mexico, and Senegal, presidential elections occurred at regular intervals, allowing opposition parties to interact repeatedly. While repeated interaction may help parties "learn" how to cooperate, it also may teach them to mistrust their peers – depending on the nature of their interactions. To capture the effects of past interactions and the frequency of those situations, I include *Previous elections*, the number of presidential elections that occurred prior to the election at hand.[10] In addition, I include the *Previous opposition share*, the vote share of the largest opposition candidate in the previous presidential election.

The actions of authoritarian regimes may deter or facilitate coordination by opposition parties. Much of the literature on electoral authoritarianism focuses on how dictators use techniques such as the intimidation of candidates and votes to discourage opposition efforts. To capture some of these coercive tactics, I include *Harassment*, a dichotomous variable based on whether there is evidence that the government harassed the opposition in the lead-up to the elections (Hyde and Marinov 2011). Its effect is expected to be negative. In addition, I control for the type of authoritarian regime under which elections are being held because military dictatorships are more likely to give way to democratic transitions. *Military dictatorship* is coded 1 if the effective head of government is from the armed forces, 0 otherwise (Cheibub et al. 2010). If military regimes are more likely to preside over transitional elections, they are likely to experience less opposition cooperation as each party jockeys to protect its position for the future.

Ordinary least squares is used to estimate the models with standard errors clustered by country. Table 9.3 provides results from models with different specifications. Model 1 includes only the relevant presidential powers, providing a baseline with

the grounds that as long as the second round admits fewer candidates than the first, the strategic winnowing out of candidates should still occur, if only in lesser degrees.

[10] It also may be the case that in nondemocracies with regular elections, ideological cleavages are more salient, impeding cooperation. In this case, the expected effect of *Previous elections* is negative.

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TABLE 9.3. *Effect of presidential powers on opposition coordination*

	Dependent variable: vote share of largest opposition candidate		
	(1)	(2)	(3)
Cabinet approval	5.564**	4.100	2.285
	(2.464)	(2.484)	(3.684)
Cabinet dismissal	−6.045**	−6.718***	−6.087*
	(2.357)	(2.417)	(3.344)
Emergency power	−5.578**	−7.269**	−7.201*
	(2.282)	(2.734)	(3.749)
Concurrent election		7.574***	7.065*
		(2.542)	(3.804)
Runoff		0.046	−0.564
		(2.541)	(3.560)
Ethnic fractionalization		6.075	9.050
		(4.358)	(5.404)
Previous elections		0.659	1.284
		(0.598)	(0.919)
Previous opposition share			0.106
			(0.137)
Military dictatorship			0.479
			(3.019)
Harassment			−4.507
			(3.862)
Constant	31.101***	23.930***	19.659**
	(2.726)	(3.308)	(7.551)
Prob > F	0.0060	0.0012	0.0006
R-sq	0.0494	0.1116	0.1683
No. observations	200	196	116
No. countries	78	75	55

*** signifies $p \leq 0.01$; ** $p \leq 0.05$; * $p \leq 0.10$

which to compare other specifications that include controls. Model 2 also incorporates control variables whose inclusion does not result in much listwise deletion of observations. Finally, model 3 includes all the variables discussed here.

In Table 9.3, the effect of presidential powers in all three models is broadly consistent with the difference-in-means results of Table 9.2: strong presidential powers to dismiss cabinet members and declare states of emergency are correlated with a decrease in opposition coordination (i.e., a decrease in the vote share of the largest candidate). These effects retain their significance at conventional levels even after the inclusion of several control variables. In addition, their effects are of substantial magnitude in comparison to the effects of other variables. Unilateral power to appoint cabinet members is correlated with an increase in the vote share of the largest opposition candidate, but this effect is not always significantly different from zero.

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Of the control variables, very few of them consistently affect the degree of cooperation among opposition candidates in presidential elections. The type of regime does not have a significant impact on the vote share of the largest candidate. Also noteworthy is that while the magnitude of the coefficient on ethnic fractionalization is large, its effect is not significantly different from zero. Interaction among the parties in previous elections does not affect the likelihood that they will cooperate. This may be because previous interactions teach both good and bad lessons about the ability to trust other parties. Alternatively, it may be that there is sufficient volatility within party systems that the same parties are not interacting with each other over time. Because the frequency of past interactions does not have an impact on current strategies, it seems unlikely that ideological considerations play a major role in determining coalition behavior. Even in regimes in which multiple elections may have given parties the chance to emphasize distinct ideologies, the antiregime dimension overwhelms any standard ideological or policy cleavages (Tucker 2006). Only the concurrency of elections has a significant impact: simultaneous legislative elections make coordination more likely in presidential races.

Why might concurrent elections facilitate opposition cooperation? One possibility is that concurrent elections may provide parties with the opportunity to create enforcement mechanisms to guard against reneging by the future president. If parties that give up their presidential aspirations know that they can secure a large enough proportion of seats in the legislature through concurrent elections, they may believe that their power within the legislature would enable them to check the power of the president. Presidents with strong powers may dissuade parties from cooperating, but concurrent elections may mitigate this effect. In these situations, the president may have powers to unilaterally control political appointments and emergency powers, but he will think twice about using them when faced with an assembly dominated by his coalition partners. Even though he has the capacity to renege on the power-sharing agreement, he may resist doing so out of fear of turning his allies into powerful foes on other issues.

The connection between presidential and legislative elections may explain what happened in the case of Kenya in 2002, for example. After two elections in which Daniel Arap Moi, the long-standing incumbent, had won with a plurality of votes, all eyes were on the opposition to see whether it could overcome its traditional divisions and present a unity candidate. Three opposition parties agreed to throw their support behind Mwai Kibaki, leader of the Democratic Party (Howard and Roessler 2006). Their promises of power sharing were made concrete in a secret Memorandum of Understanding (Kasara 2005). In exchange for the presidency, Kibaki promised to be president for only one term and to advocate constitutional changes that would reduce the powers of the presidency and create the post of prime minister, which would be given to Raila Odinga, the head of another major opposition party. Odinga and other opposition leaders, in turn, agreed to give up their presidential aspirations

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in order to support Kibake as head of the coalition, NARC. Kibaki then proceeded to win the election with 62.2 percent of the vote.

What followed in Kenya directly points to the enforcement problem that parties face. After having promised constitutional reform and to not run for reelection in order to persuade Odinga and others to support him, Kibaki, after ascending to the presidency, proceeded to renege on his preelectoral promises. He stayed largely silent on the issue of constitutional reform, condemning it to failure in a referendum. When his term ended in 2007, Kibaki sought reelection, using his powers of incumbency, amid accusations of electoral fraud and intimidation, to win another term. The resulting postelectoral violence between supporters of Kibaki and Odinga directly stemmed from the sitting president's attempts to renege on the terms of the original preelectoral coalition in 2002.

Kibaki's maneuvers to stay in power prompt an obvious question: if everyone knew that Kibaki were to inherit a strong presidency, why did they sign an agreement with him solely on the basis of promises to reform the constitution? Odinga and others should have perceived these promises as not credible and, as a result, not entered into a coalition with Kibaki in the first place. Perhaps Kibaki's coalition partners anticipated their victory over his Democratic Party in concurrent assembly elections: of the 125 seats won by NARC (a majority within the assembly), 86 were won by parties other than Kibaki's. It could be that parties believe they can "solve" problems of postelectoral enforcement when concurrent elections allow for a relative balance of power among opposition parties as reflected in interbranch relations. In the case of Odinga and his partners, this appears to have been a mistake. The result may point to a general phenomenon: if coalitions form in spite of appropriate constitutional conditions, they may break up in spectacular fashion, as NARC did in Kenya.

CONCLUSION

Elections under dictatorship typically are viewed as mere instruments by which incumbents perpetuate themselves in power. Yet the empirical record is more mixed: multiparty elections sometimes lead to democratic transitions (Lindberg 2008; Teorell 2010). The challenge is in determining how.

The electoral process does present moments when the opposition can organize itself in order to better challenge authoritarian rulers. One such moment that opposition parties can seize is the period before elections when they must decide whether to form a coalition. In deciding on the best strategies to pursue, however, opposition parties face competing pressures. Forming a preelectoral coalition may hold the promise of securing the "best place" for opposition parties: if cooperation results in electoral victory, then a coalition should be Pareto optimal for all parties to the agreement (even if some parties gain more than others). Yet this scenario depends

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crucially on the ability of parties to enforce their agreements – something that becomes problematic because parties are bargaining over the political positions endowed with powers that will enable them to affect the distribution of power in the future.

Parties in established democracies form coalitions, but they appear not to suffer from these problems of trust. This may be attributable to the importance of repeated interaction. Party systems in established democracies are relatively stable and, as a result, parties interact with each other frequently. If parties expect that they will be interacting in the future, they have interests in safeguarding their reputations for cooperation. In addition, the publicity of preelectoral agreements in democracies might also make them costly to break; voters might punish parties for reneging (Laver and Schofield 1998: 28). As a result, reneging on preelectoral agreements almost never happens in established democracies, leading most scholars of coalitions in democracies to disregard the enforcement problem (Carroll and Cox 2007; Golder 2006).

Because of the structure of the problem facing opposition parties in authoritarian elections, in contrast, the *de jure* powers of the president are important. Presidencies endowed with strong powers to affect parties' future political positions pose the greatest problem for opposition forces trying to form a preelectoral coalition. In the extreme, parties may fear that upon victory, one side will use the coercive institutions of the state to consolidate its rule. Or parties, absent the fear of violence, may simply worry that one side may be able to monopolize political offices.

In this context, authoritarian constitutions are more than just parchment. Like other types of formal political institutions, such as legislatures and parties, constitutions influence the behavior of political actors and the types of outcomes generated – even in authoritarian regimes. While recent work has examined how formal institutions affect the behavior of authoritarian incumbents (Barros 2002; Gandhi 2008; Lust-Okar 2005; Wright 2008), this analysis suggests that they have effects on the opposition as well. Written rules do matter: even if they do not perfectly constrain authoritarian incumbents, they influence the behavior of opposition parties that are striving to become future incumbents.

APPENDIX I. PRESIDENTIAL ELECTIONS IN AUTHORITARIAN REGIMES, 1946–2008

Afghanistan 2004
Algeria 1995, 1999, 2004
Angola 1992
Argentina 1958, 1963, 1983
Azerbaijan 1992, 1993, 1998, 2003, 2008
Korea (South) 1952, 1956, 1963, 1967, 1971, 1987, 1992
Kyrgyzstan 1995, 2000, 2005
Liberia 1955, 1959, 1985, 1997, 2005
Madagascar 1982, 1989, 1992
Malawi 1994

(*continued*)

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APPENDIX I. (*continued*)

Bangladesh, 1978, 1981, 1986
Belarus 1994, 2001, 2006
Benin 1968, 1970, 1991
Bolivia 1951, 1956, 1960, 1964, 1966, 1978, 1979, 1980
Bosnia-Herzegovina 1996
Burkina Faso 1978, 1998, 2005
Burundi 1993
Cambodia 1972
Cameroon 1992, 1997, 2004
Cape Verde 1991
Central African Republic 1981, 1993
Chad 1996, 2001, 2006
Colombia 1949, 1958
Comoros 1996, 2002, 2006
Congo (Rep. of) 1992, 2002
Costa Rica 1948
Cote d'Ivoire 1990, 1995, 2000
Cuba 1958
Cyprus 1968
Dem. Rep. of Congo 2006
Djibouti 1993, 1999
Dominican Republic 1947, 1962, 1966
Ecuador 1948, 1968, 1978, 2002
Egypt 2005
El Salvador 1950, 1956, 1967, 1972, 1977, 1984
Equatorial Guinea 1968, 1996, 2002
Gabon 1993, 1998, 2005
Gambia 1982, 1987, 1992, 1996, 2001, 2006
Georgia 1991, 1995, 2000
Ghana 1960, 1979, 1992
Guatemala 1957, 1958, 1966, 1985
Guinea 1993, 1998, 2003
Guinea-Bissau 1994, 1999
Haiti 1957, 1988, 1990, 1995, 2000, 2006
Honduras 1948, 1954, 1971, 1981
Iran 1980, 1981 (2), 1985, 1989, 1993, 1997, 2001, 2005
Kazakhstan 1999, 2005
Kenya 1992, 1997, 2002
Maldives 2008
Mali 1992
Mauritania 1992, 1997, 2003, 2007
Mexico 1946, 1952, 1958, 1964, 1970, 1982, 1988, 1994, 2000
Moldova 1996
Montenegro 2008
Mozambique 1994, 1999, 2004
Namibia 1994, 1999, 2004
Nicaragua 1947, 1950, 1957, 1963, 1967, 1974, 1984
Niger 1993, 1996, 1999
Nigeria 1979, 1983, 1993, 1999, 2003, 2007
Panama 1948, 1952, 1968, 1984, 1989
Paraguay 1963, 1968, 1973, 1978, 1983, 1988
Peru 1956, 1963, 1980, 1995, 2000, 2001
Philippines 1969, 1981, 1986
Portugal 1949, 1958, 1976
Russian Federation 1991, 1996, 2000, 2004, 2008
Rwanda 2003
Senegal 1978, 1983, 1988, 1993, 2000
Serbia-Montenegro 2000
Seychelles 1993, 1998, 2001, 2006
Sierra Leone 1996
Sri Lanka 1982, 1988
Sudan 1996, 2000
Taiwan 1996, 2000
Tajikistan 1991, 1994, 1999, 2006
Tanzania 1995, 2000, 2005
Togo 1993, 1998, 2003, 2005
Tunisia 1999, 2004
Turkmenistan 2007
Uganda 1996, 2001, 2006
Uruguay 1984
Uzbekistan 1991, 2000, 2007
Venezuela 1958
Yemen 1999, 2006
Zambia 1968, 1991, 1996, 2001, 2006, 2008
Zimbabwe 1990, 1996, 2002, 2008

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APPENDIX II. DESCRIPTIVE STATISTICS OF VARIABLES

Variable	Mean	Standard deviation	Minimum	Maximum	N
Dependent variable Vote share of largest opposition candidate	25.571	16.966	0	84	260
Independent variables (presidential powers)					
Cabinet appointment	0.631	0.483	0	1	236
Cabinet dismissal	0.644	0.480	0	1	236
Emergency power	0.693	0.462	0	1	264
Control variables					
Concurrent election	0.716	0.452	0	1	261
Ethnic fractionalization	0.529	0.265	0	0.930	259
Harassment	0.310	0.464	0	1	197
Military dictatorship	0.429	0.496	0	1	261
Previous election	1.655	1.744	0	8	264
Previous opposition share	24.650	16.560	0	84	176
Runoff	0.598	0.491	0	1	261

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